

CHARTER COMMISSION
CITY AND COUNTY OF HONOLULU

TUESDAY, MAY 2, 2006
CITY COUNCIL COMMITTEE ROOM
SECOND FLOOR, HONOLULU HALE
2:00 P.M.

MINUTES

Charter Commission Members Present:

Donn M. Takaki
Andrew Chang
Jerry Coffee
E. Gordon Grau
Amy Hirano
Darolyn H. Lendio
Stephen Meder
Jim Myers
James Pacopac
Jan Sullivan
Malcolm J. Tom
Jared Kawashima – Late 2:10 p.m.
Jeffrey T. Mikulina – Late 2:14 p.m.

Others Present:

Chuck Narikiyo, Executive Administrator, Charter Commission
Diane Kawauchi, Deputy Corporation Counsel, Department of the Corporation Counsel
Dawn Spurlin, Deputy Corporation Counsel, Department of the Corporation Counsel
Lori K. K. Sunakoda, Deputy Corporation Counsel, Department of Corporation Counsel
Loretta Ho, Secretary, Charter Commission
Nicole Love, Researcher, Charter Commission

1. Call to Order

Chair Donn Takaki called the meeting to order at 2:10 p.m. on May 2, 2006. Chair Takaki went over housekeeping rules and stated that testimony will be limited to three minutes due to the large number of testifiers and must be related to the agenda.

**Commissioner Kawashima arrived at 2:10 p.m.

2. Executive Administrator's Report

The Executive Administrator gave a brief recap. The Commission completed the three community outreach meetings in Kailua, Kapolei, and Hawaii Kai, in March and April. He reported that the meetings were well attended and the Commission was able to get

input from many new faces, and some old ones as well. He also recapped that on April 18, the Commission held a meeting to go over amendments to certain proposals.

The Executive Administrator ran through the next steps in the process. Following this meeting and the one on May 10, the Commission will have selected items for the General Election ballot. The items will then be referred to the Committee on Style, which will be constituted and charged after voting is completed at the May 10 meeting. The Committee on Style will be drafting the language for the ballot and finalizing the language of the proposals, without changing the intent of the proposals, along with Corporation Counsel. The ballot items will then go through an agency and legal review process, before one final review and vote planned in August. The absolute deadline to get the final language to the City Clerk's office is September 1. Following that, work will be focused on public education before the election in November. The Committee on Submission and Information will consider and develop a public education campaign.

Finally, he explained that the budget process continues in the City Council; and that he was waiting to hear when the Commission next needs to be available to testify or answer questions on our budget request. He thought that it would be sometime in May.

**Commissioner Mikulina arrived at 2:14 p.m.

Chair Takaki asked Executive Administrator Narikiyo to explain how they are going to vote on the proposed charter amendments today.

Executive Administrator Narikiyo explained that per the Commission rules, the votes on the proposals today as well as May 10 require 7 or more votes to pass on to the next phase, regardless of how many Commissioners are in attendance. Chair Takaki stated they would vote on each proposal as they go through the items. He asked if any of the Commissioners had any objections and there were none. Commissioner Myers expressed concern regarding the voting process. He felt if they are voting on each individual proposal there may be a lot of proposals passed before the May 10 meeting and wanted to be sure they would have another opportunity they would be able to vote for a reasonable number of proposals for the ballot. He went on to say he would be voting in favor of certain things but if he knows there are going to be a lot of proposals on the ballot, he may change his mind because he may not consider it as important as other things. Chair Takaki stated they would not be having another voting meeting scheduled where they can narrow the proposals down further. He went on to say their intent is after the May 10 meeting to look at what has been passed and decide if they should combine several of those into one or two housekeeping measures, and beyond that the only other vote according to the Commission Rules is the approval of the Style Committee's report on the order of the questions and the questions for the ballot. Commissioner Myers shared his concern that by the May 10 meeting, knowing there are too many proposals passed at today's meeting may force him to vote "no" on something he would have voted "yes" because of the order they are doing their business today. Commissioner Coffee agreed with Commissioner Myers concern as well.

Chair Takaki asked if the other Commissioners had the same concerns as Commissioner Myers and Commissioner Coffee. Commissioner Lendio commented she doesn't share the opinions totally, but proposed at the end of the May 10 meeting, they

could decide whether or not they need to sunshine another meeting to cut down the number of proposals specifically for that purpose. Commissioner Myers and Commissioner Tom agreed with Commissioner Lendio's suggestion.

3. Discussion and Action on Amendments to Proposals:

CATEGORY 1: ETHICS AND STANDARDS OF CONDUCT

PROPOSAL 28 - Ethics Commission; Allow the Ethics Commission to impose civil fines.

The following individuals testified:

1. Piilani Kaopuiki, President, League of Women Voters of Hawaii
2. Larry Geller, President, Kokua Council
3. Charles (Chuck) Totto, Executive Director and Legal Counsel, Ethics Commission
4. Charles Djou, Councilmember, Honolulu City Council

Written testimony:

1. Charles Djou, Councilmember, Honolulu City Council
2. League of Women Voters
3. Charles (Chuck) Totto, Executive Director and Legal Counsel, Ethics Commission
4. Randy Perreira, Deputy Corporation Counsel Executive Director, HGEA
5. Larry Geller, President, Kokua Council

Piilani Kaopuiki testified in support of Proposal 28 on behalf of the League Women Voters of Honolulu. She read her written testimony into the record.

Larry Geller of Kokua Council testified in favor of Proposal 28. He read his written testimony into the record.

Chuck Totto of the Ethics Commission testified in support. Mr. Totto stated his testimony focused on a question raised by Commissioner Sullivan at the last meeting regarding why can't they remove employees from the group that would be focused on subject to the civil penalties. He went on to say if they look at how collective bargaining union employees are dealt with now, they are subject to discipline from the appointing authorities. Their bosses in theory and in practice will implement some sort of discipline and the Ethics Commission can make recommendations based on that. Mr. Totto stated their concern is with the two groups where discipline was maybe lacking. One group is elected officers, because they have no appointing authority and are not subject to discipline; the other group is high-level appointees, those who are appointed by the Mayor including Directors and Division Heads as opposed to civil service. He stated in his written testimony he explained the definition of "officer" as specified in the Charter and the definition includes elected officials and high-level members of the departments, Board and Commission Members, City Prosecuting Attorneys and Civil Attorneys. He went on to say all these people have significant discretionary authority or fiscal power and because of that he feels it's appropriate to focus on these people. Mr. Totto stated not only is there an issue with no discipline at all, there's also a concern with appointed positions that may a product of patronage which is not a bad thing and can be effective and underlined the need for discipline by the person who appointed these high-level

appointees such as directors. He went on to say the other aspect is that due process requires a rational basis for treating officers differently than employees. He stated there's been a case in Hawaii in the ethics area regarding how some officers can be treated differently than other officers. In the particular case they are looking at regarding fines, there are ample reasons to limit the class of personnel who may be fined to "officers." Officers as he pointed out earlier are those with the greatest discretionary authority for fiscal power in government. Therefore their unethical conduct can do the most harm to city government and the public. He noted secondly officers are the least likely to be disciplined, there is no imposition of discipline for elected officials and they have concerns for department heads because of political consideration such as patronage outweighing merits of the case. His third concern is regarding civil fines, which will deter misconduct at the highest level of government and should foster a culture of integrity. In contrast, under current law the appointing authority may already discipline collective bargaining employees.

Commissioner Mikulina asked Mr. Tutto by deleting the word "employees" what harm would it do to the proposal? Mr. Tutto responded he believes the difficulty would be in the implementation and has asked for an opinion from Corporation Counsel two years ago as to what could the Ethics Commission do in light of Chapter 89 which protects the collective bargaining rights of employees. He went on to say they were a little vague, but the bottom line would be, if the Commission fined an employee, the Commissioner could end up going before the arbitrator and the arbitrator would have the ultimate determination as to whether or not the Commission's fine was appropriate or not. He continued to say that is impractical and raises a lot of legal stumbling blocks for the Commission to have an efficient approach to this, although that might be the best or appropriate approach to doing it if they have everyone subject to the fine. But the downside is there is already a process for the Commission to make a recommendation of suspension without pay, which is like a fine to a collective bargaining employee.

Commissioner Sullivan stated to Mr. Tutto at the last meeting she was preparing to make the compromise amendment to delete "and employees" as Mr. Tutto has suggested. She went on to say Commissioner Mikulina's concern is how the Commission is going to do the amendment at this point and time.

Commissioner Myers asked under the Robert's Rules of Order, isn't anything on the floor subject to being amended before it's voted on? Commissioner Lendio responded not according to the agenda today. She went on to say they would have to defer it to another meeting and sunshine that proposal for amendment at the next meeting. Mr. Tutto asked if the Commission could defer the proposal and has it deferred to the next meeting to allow the Commission to amend the proposal with Mr. Tutto and Commissioner Sullivan's proposed amendment. Commissioner Mikulina asked if the Commission could amend the proposal today and sunshine it for the next meeting. Commissioner Lendio responded no, under their agenda they are not allowed to amend the proposals because it does not give sufficient notice to the public. Chair Takaki asked if the proposal would be with the existing language if they sunshine it for the next meeting. Commissioner Lendio responded no, they would have to change the language of the agenda to allow the Commission to amend it so the public has adequate notice. Chair Takaki clarified and asked if the proposal would have the existing language that's currently written for this proposal or would it be sunshined with the new language if they

amended the language. Commissioner Lendio responded they would put the existing proposal and sunshine the action of amendment and notify the public with the adequate amount of time that they would be amending the proposal. Chair Takaki asked if they would be amending the proposal on May 10 and voting on the proposed amendment after May 10 meeting. Commissioner Lendio responded no, they could sunshine that day as well, as long as they sunshine with adequate notice.

Commissioner Chang asked a follow-up procedural question: what about other requests for floor amendments? Chair Takaki stated they would have to treat every proposal the same way in the interest of fairness. Commissioner Lendio commented that on the May 10 proposals they could give them the power to amend and take action on the items on the agenda. Or they could be consistent for the May 10 meeting and do the same as they are doing today and have another meeting after May 10, 2006. Chair Takaki clarified the Commission would have to make a motion to defer and seven Commissioners would have to vote in favor of deferring Proposal 28 or other proposals. He asked Commissioner Sullivan procedurally if the options stated by Commissioner Lendio answered Commissioner Sullivan's question regarding making changes to the language before they take their final vote. Commissioner Sullivan responded she doesn't understand why they are not able to do a floor amendment at today's meeting. Commissioner Lendio replied she doesn't think it's a legal issue per say but sees it more of an OIP issue. She went on to say the language of the agenda does not allow them to make amendment in accordance to the agenda for the day and the public is not anticipating amendments but are anticipating approvals or denials of proposals on the agenda that would be on the ballot.

Commissioner Myers asked if Corporation Counsel agrees with Commissioner Lendio comments. Deputy Corporation Counsel Dawn Spurlin replied she agreed with Commissioner Lendio because the earlier meetings, the understanding of the Commissioners was that the amendments would be addressed in the prior meetings and at the May 2 and 10 meeting were to vote on the proposals. Deputy Corporation Counsel Spurlin went on to say if they would like to do amendments they would do as Commissioner Lendio suggested to put it on the next agenda or schedule another meeting.

Councilmember Charles Djou testified in favor of Proposal 28. He stated he feels this is an important proposal and can be passed as is. He goes on to say the Honolulu Ethics Commission currently only has two choices when there is a violation code; issue a letter asking them to refrain from future unethical conduct or referring it to the City Prosecutor for putting a person in jail. Councilmember Djou goes on to say while he thinks those are two valid and viable options, he does not feel it covers the full range of violations of the City Ethics Code. He went on to say he thinks there are times where there needs to be a little more aggressive and serious action than a mere slap on the wrist, but does not rise to the level of putting someone in jail, which is what he felt Proposal 28 does. He noted he's not opposed to the suggested amendment by the HGEA and the Executive Director of the Ethics Commission, but felt the Proposal 28 can pass as is. Councilmember Djou stated no one should be violating the Ethics Code whether a city officer or employee. He encouraged the Commissioners present to pass the proposal as currently drafted, but would still support the proposed amendment should the Commission decide to defer the proposal to make the amendment. He went on to say

this is an important measure and doesn't want it to get caught up in parliamentary problem of amending the proposal and have it die because of this. Chair Takaki asked Councilmember Djou how would he respond regarding anyone, an officer or an employee, that is covered by a collective bargaining agreement to double jeopardy. Councilmember Djou responded that it is possible for any United States citizen to be subject to double jeopardy. He went to say his response would be how much do they trust and believe in the Ethics Code and the Ethics Commission. He continued to say the Ethics Commission has conducted themselves very judiciously and effectively. Councilmember Djou commented it may be a theoretical possibility but doesn't view it as a realistic possibility. He went on to say if the employee is disciplined already, he doesn't think the Ethics Commission to go after someone who has already been punished.

Commissioner Chang stated he's still concerned about deferring the proposal to a later date. He went on to say on he understands the Charter does not specifically authorize the Ethics Commission to impose penalties, but on the State level the Ethics Commission has whatever powers the State Legislature gives them. Commissioner Chang asked if there is any reason why the Council can't give that power to the Ethics Commission and why is a Charter proposal needed. Councilmember Djou asked the same question and the opinion he received from the Corporation Counsel stated that the only way to afford the power over to the Ethics Commission is through a Charter amendment.

Commissioner Mikulina shared his concern regarding the collective bargaining and asked Councilmember Djou if he knew if other municipalities get over the wrinkle of fining or penalizing employees who are with a collective bargaining unit. Councilmember Djou responded it is only a theoretical situation that an employee is punished through administrative needs and then the Ethics Commission adds on and give a punishment on top of that. He went on to say, as he understands it in other municipal governments in the United States it has not been a problem, and the cities that have this have been able to successfully enforce the ethics code without running into these difficulties.

Commissioner Chang asked Corporation Counsel to opine on the issue that the Charter does not specify the authority to impose penalties but the Charter is also silent on that question. He went on to ask if whether or not the language in the current Charter is the rule in which they would be abiding by as far as the Council is concerned; the Charter does not specifically authorize a penalty nor does it deny it. Deputy Corporation Counsel Diane Kawauchi responded that was an opinion that was solicited from the City Council to Corporation Counsel some time ago. She doesn't recall the specifics but recalls the position that the Charter needs to specifically empower the Ethics Commission to impose fines. She goes on to say the Council went by way of a Council-initiated charter amendment that failed as Councilmember Djou indicated.

William Woods-Bateman testified in support. He went on to say his concern is about process and he seen much of the debate of Proposal 28 is about process and understanding. He noted one of the issues is what the Charter conveys versus other means to enact certain activities and as discussed, the Charter sets to policy. He went on to say all the standards should apply to everyone who is a city employee and he believed the overriding issue is if they are going to set the standard for everyone if they

are going to set the standard for every as a policy and how it's enacted would follow. He encouraged the Commissioners to pass Proposal 28 and support the public expecting that everyone would be treated the same and have the same expectations and responsibility.

Chair Takaki asked Corporation Counsel if there are any legal problems relating to the double jeopardy referred to by HGEA? Deputy Corporation Counsel Kawauchi replied they do find a concern with imposing civil fines on civil service employees that are subject to collective bargaining division. She went on to say part of it deals with the timing of the disciplinary action that would be taken by the appointing authority vis-à-vis the investigation and determination of what the Ethics Commission is going to do. Deputy Corporation Counsel Kawauchi commented she would presume that both of the investigations would be pending in a confidential context, where one may not know the existence of the other and would be going on a parallel track except for when the Ethics Commission imposes a civil fine or the appointing authority lets out the disciplinary action. Chair Takaki asked if they would still have that concern if the Commission were to exclude collective bargaining employees and only include elected officials and high-level appointed officials. Deputy Corporation Counsel Lori Sunakoda responded they would still have that concern based upon the definition of "officers" as set forth in the Charter provision 13-101.4. She went on to give some specific examples that may be subject to challenge such as the Liquor Administrator who is appointed by the Liquor Commission, the first Deputy of the Department of Human Resources who holds a civil service position and there are numerous Departmental Division Chiefs within the city that are appointed by the Department Head. Commissioner Grau asked to clarify if the Ethics Commission chooses to exercise their responsibility because there has been an internal disciplinary action taken within the department, there would not be any double jeopardy that would occur. He went on to say it has been raised this is only a theoretical issue and seems it may not be a problem because the Ethics Commission may only choose to act if no disciplinary action has been taken internally within a department. Deputy Corporation Counsel Kawauchi responded that may be true but wasn't certain how the Ethics Commission would know that a disciplinary action was taken against an employee. She went on to say the appointing authority may investigate the misconduct of the employee and determine a private reprimand with the letter in the employee's file would be the discipline that the appointing authority would do and not necessarily would be available to the public. The suspension or a termination would be public information.

ACTION:

Commissioner Myers moved to defer Proposal 28 to the May 10th meeting with the intent of excluding employees covered by collective bargaining agreement and also looking at the definition of officers and those that are covered by this definition. Commissioner Grau seconded that motion. Discussion followed.

Commissioner Myers stated he thinks this is a good proposal and has concerns with the problem of the possible double jeopardy and the problems with the collective bargaining employees. He went on to say he would hate to have this voted down totally because there was a move from the HGEA and other unions to defeat it on the ballot and felt this might be a way of preventing that. Chair Takaki commented he would vote not to defer

and would vote to move the proposal forward because the Commission intends to go through Corporation Counsel and other agency review. At which point if there are questions of legality regarding double jeopardy with employees in a collective bargaining agreement, they would have to clean up the language. Chair Takaki asked Corporation Counsel of the Commission could do that. Deputy Corporation Counsel Diane Kawauchi responded no. Her understanding of the Commission anticipates Style revisions to be non-substantive changes to address format but deleting "employees" from this proposal would be the purview of a Style review by Corporation Counsel. Chair Takaki asked although it would make it legal? Deputy Corporation Counsel Kawauchi responded they would not venture there.

Commissioner Coffee stated he is very strongly in favor of deferring this proposal also.

Commissioner Mikulina agreed with Chair Takaki and felt they should vote on the proposal today. He went on to say if there were any legal issues, they would have known about prior to today's final vote as they have been reviewing the proposals for the past six months and trusts the Ethics Commission's discretion to impose these things. Commissioner Coffee commented it could be taken out of the Ethics Commission if the appointing authority chooses to step in immediately and impose the discipline then the Ethic Commission can't impose double jeopardy.

Commissioner Lendio commented that the first time they talked about the proposal when Mr. Tutto testified they were in agreement that the "and employees" was problematic. She went on to say when they met again in the amendment process, Mr. Tutto reassured the Commission that that wasn't what the prior testimony was had confused the Commissioners at the last meeting. Today Mr. Tutto is proposing that the Commission amend the proposal inconsistent with the first time they met regarding this proposal which now has the Commission stuck in a legal quagmire. She noted she would not vote for the proposal but would defer to the fellow Commissioners. She went on to say she saw that some Commissioners feel it is a very important amendment and would defer to them but feels they should have resolved it at the last meeting when they had the discussion. Commissioner Sullivan agreed with Commissioner Lendio but she would be voting for Commissioner Myers amendment. She clarified that Corporation Counsel noted this was a legal issue from the start and it was in written confidential opinion to the Commissioners and thinks it's something that has to be addressed.

AYES: COFFEE, GRAU, LENDIO, MEDER, MYERS, SULLIVAN, TOM - 7
NOES: TAKAKI, CHANG, HIRANO, KAWASHIMA, PACOPAC - 5
ABSTAIN: MIKULINA - 1

MOTION TO DEFER PASSED

PROPOSAL 30 - Ethics, Charter Commission, Reapportionment
Commission; Include the members of the Charter and Reapportionment Commissions
as city officers for purposes of the ethics laws.

The following individuals testified:

1. Chuck Totto, Executive Director and Legal Counsel, Ethics Commission

Written testimony:

1. Chuck Totto, Executive Director and Legal Counsel, Ethics Commission

Chuck Totto testified in support of the proposal but stated there are other means in achieving this other than a Charter amendment. He highlighted his written testimony.

ACTION:

Commissioner Lendio moved to approve Proposal 30, Commissioner Grau seconded that motion. No discussion followed.

AYES: NONE - 0

NOES: TAKAKI, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MEDER,
MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM - 12

ABSTAIN: CHANG - 1

MOTION FAILED

PROPOSAL 31 - Impeachment; Provisions re impeachment of elected officials are invalid; options to correct the charter.

The following individuals testified:

1. Chuck Totto, Executive Director and Legal Counsel, Ethics Commission

Written testimony:

1. Chuck Totto, Executive Director and Legal Counsel, Ethics Commission

Chuck Totto testified the Commission does not need to move this proposal forward. He stated he met with the Corporation Counsel and determined the best approach to solving the impeachment process is to take it to Legislature and have the corrective change to the law at that level.

ACTION:

Commissioner Lendio moved to approve Proposal 31, Commissioner Grau seconded that motion. Discussion followed.

Commissioner Mikulina stated he agrees with Mr. Totto and would not be voting for this amendment.

AYES: NONE - 0

NOES: TAKAKI, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MEDER,
MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM - 12
ABSTAIN: CHANG – 1

MOTION FAILED

Chair Takaki asked the Commission for a motion to take a five-minute recess.

Commissioner Lendio moved to take a five-minute recess, Commissioner Grau seconded that motion.

***RECESS: 3:05 p.m.

***RECONVENED: 3:10 p.m.

Chair Takaki advised the Commissioners there was a letter passed out during their recess from Mr. William Woods-Bateman, which was received on Monday, from Mr. Woods-Bateman stating he feels there is a conflict of interest that Commissioner Tom may have with some of the items before the Commission. He went on to say he felt it was important in the spirit of openness to share this letter with the Commission and to allow Corporation Counsel the chance to comment because they have reviewed the letter and to allow Commissioner Tom and Mr. Woods-Bateman to give their comments.

Chair Takaki asked Corporation Counsel to comment on the letter they received. Deputy Corporation Counsel Diane Kawauchi responded that she will remind the Commissioners that there is a provision in their rules that they approved that they require a Commission to submit a written statement disclosing any interest that the Commissioner determines may be adverse to the public interest as fulfilling their duties as a Commissioner and that written statement needs to be filed with the Secretary of the Commission together with the Office of the City Clerk.

Chair Takaki asked Commissioner Tom to give his comments regarding the letter. Commissioner Tom stated the letter dated May 1, 2006 (**Attachment #1**) refers to a series of lawsuits that were filed on July 5, 2003 involving an event called the "Family Day Parade". He noted there were 6 plaintiffs one of whom included Mr. William Woods-Bateman and 7 defendants one of which was Commissioner Tom in his official capacity as Deputy Managing Director when he was with the city, and not on a personal basis. Commissioner Tom went on to say Mr. William Woods-Bateman did not sue him in his individual capacity but only as an official with the City Administration. The lawsuit was consolidated with two other lawsuits and was settled September 20, 2004 at which time the City agreed to set the action in the settlement of the lawsuits including the payment of attorney fees and costs to the plaintiffs' attorney of the ACLU. Commissioner Tom stated he was not required to take any individual action to the settlement nor was he made to pay any portion of the attorney fees or costs out of his personal funds. He noted he subsequently left the City Administration in October 2004. Commissioner Tom stated during his tenure with the City, there were a number of lawsuits that he was involved in and did not consider any of those lawsuits as directed to him personally. He stated as he reflects on the lawsuit of the Family Day Parade, he does not harbor any ill feeling towards including Mr. William Woods-Bateman. He went on to say he has forgotten that one of the plaintiffs was Mr. William Woods-Bateman until he received the

written statement from Mr. William Woods-Bateman reminding him of the lawsuit. Commissioner Tom assured Chair Takaki and his fellow Commissioners that he has not and in the future would now consider the lawsuits against him in his official capacity, discussion, deliberation or voting on any charter amendment before the Commission. Commissioner Tom stated he is aware of the rule Corporation Counsel has quoted. He commented the rule does not address voting by a Commissioner following issuance of a written disclosure. He stated he did not file a disclosure because he didn't realize Mr. Woods-Bateman was a plaintiff in the lawsuit having been reminded about the lawsuit, he still believes he does not a conflict in this matter at all.

Chair Takaki asked the Commissioners if they had any questions for Commissioner Tom. Commissioner Lendio asked Corporation Counsel regarding the circumstances recited in Mr. Woods-Bateman's letter if they determine that there are any legal conflicts on behalf of Commissioner Tom? Deputy Corporation Counsel Kawauchi replied her position would be no in large part because it was a lawsuit against the city and the named city officials in their official capacity. Commissioner Lendio commented she appreciates Commissioner Tom candidness and honesty in describing the situation and Mr. Woods-Bateman for bringing it up. Commissioner Lendio stated with her experience and under the circumstances does not feel there is any conflict of interest, nor an appearance of conflict of interest.

Chair Takaki asked Mr. Woods-Bateman to comment on his letter. Mr. Woods-Bateman stated he appreciates the seriousness taken and the kind words of Commissioner Tom. He went on to say the issues of the lawsuit and issues are directly related to proposal 41 and felt it is a concern to him and believes the Commission needs to know there is this conflict. Mr. Woods-Bateman stated the provisions that were violated that the lawsuits begun were because of violations of equal opportunity and using of city resources in an unfair manner. He goes on to say although when the lawsuits were finalized to agreement, did not find fault, it said it had to strengthen the rules to assure those violations did not occur. Proposal 41 goes specific to those issues to make sure city resources and those who use city resources are not in violation and should not be in violation. Mr. Woods-Bateman stated he feels it particular concerns Proposal 41. He went on to say the issues of that lawsuit and his behavior in his official capacity as an official of the city are directly related to that issue.

Deputy Corporation Counsel Kawauchi clarified that the lawsuit requires certain action of the City and County of Honolulu but it did not require action dealing with standards of conduct. She went on to say the lawsuit required the city to adopt administrative rules that dealt with City co-sponsorship of events, required the City to post a statement on the website to affirm the City's support of diversity for cultural, racial, people with disabilities and things of that nature. Deputy Corporation Counsel Kawauchi stated it did not require the City to adopt administrative rules, ordinances or charter amendments that deal with standards of conduct. Mr. Woods-Bateman responded he disagreed. He stated in the standards of conduct it has the equal opportunity policies and service provisions of the city. He goes on to say it directly relates to that and how the city resources should be used.

Commissioner Kawashima asked Mr. Woods-Bateman if he sees this as such a clear conflict of interest, why did he not raise this issue earlier? Mr. Woods-Bateman

responded Commissioner Kawashima is challenging him to the timing of his concern. He stated he thought the process would go forward in a way in which all the issues would be debated and openly discussed. He went on to say several comments made in the last meeting made him feel there was some specific negativity towards him and the comments he has made in his testimony on this and two other proposals. Commissioner Kawashima then asked Mr. Woods-Bateman if his comments that he is referring to if they were comments made specifically by Commissioner Tom or just in general. Mr. Woods-Bateman responded yes. Commissioner Kawashima stated Mr. Woods-Bateman's letter covers Proposals 41, 9 and 13, based on his statement he just made it seems he's limiting that to Proposal 41. Commissioner Kawashima asked Mr. Woods-Bateman if it was true or not true. Mr. Woods-Bateman responded he thinks that's the primary one, because of the interpretation of Corporation Counsel the primary is Proposal 41. It's the issues of the lawsuit, it's the issue of why there was a problem and the issues of how it was resolved. He stated he has been a testifier for several groups for Proposals 9 & 13, he feels that conflict still exist with him as well as the issue. Commissioner Kawashima clarified that Mr. Woods-Bateman is asking Commissioner Tom to recuse himself with respect to Proposals 41, 9 and 13. Mr. Woods-Bateman replied "yes".

Chair Takaki returned the matter to the agenda and moved on to Proposal 41.

**** PROPOSAL 41** - Standards of Conduct; Codify within the charter existing state law and provide uniform standards of conduct within all city entities.

The following individuals testified:

1. Tom Heinrich
2. Chuck Totto, Executive Director and Legal Counsel, Ethics Commission
3. William Woods-Bateman

Written testimony:

1. Robert Watada
2. George Fox
3. Chuck Totto, Executive Director and Legal Counsel, Ethics Commission
4. William Woods-Bateman, GLEA Foundation
5. William Woods-Bateman, Oahu County Committee of the Democratic Party of Hawaii
6. William Woods-Bateman, Honolulu Japanese American Citizens League and NAACP Honolulu

Tom Heinrich testified in opposition to the proposal as amended at the April 18th meeting. He stated his opposition is primarily related to the complexity that is represented, the inclusion of contractors – sometimes where it's appropriate and many times where it is not in terms of its expression in what would be the amendments to Article 11. He went on to say there are certain portions where it is really an attempt that is re-statement of the law. He noted there are many places particularly in the Charter in which a restatement of other governing statutes are not appropriate. Mr. Heinrich noted on the second page of the amended portion there's a list of legal forum, which is inappropriate for inclusion in the Charter language itself. He commented there are some very worthy proposals included in Proposal 41, but stated it's too much of a laundry list

at this point and in consideration in trying to keep the ballot questions straight forward, he feels this is not a well set forth proposal and would be best to leave to the City Council process.

Chuck Tutto testified in opposition and stood on his written testimony.

William Woods-Bateman testified in support. He stated he was speaking on behalf of the Oahu County Committee Democratic Party of Hawaii, NAACP Honolulu and the Japanese American Citizens League. He noted this amendment establishes the standard of conduct of all city entities, personnel, elected officials and contractors. Mr. Woods-Bateman stated the provisions of ethics, conflicts of interest, disclosure, fair and equal treatment, prohibition, political activities, other prohibited activities, future employment, Ethics Commission, registration of lobbyist and penalties and sanctions, disciplinary actions or violations to remain because they already exist in that section or drawn from another section of the charter and no new element has been added to the section. He went on to say enabling language for ordinances and rule making will provide for an effective review and enforcement of the standard of conduct is clarified. He stated he thinks the rationale is clear, the public has expected that all government servants regardless of whom they are or using City resources including contractors are following at certain standards of conduct to protect their Fiduciary responsibility and the responsibility to provide the services of the community. He encouraged the Commission to pass this proposal for the public to review this and pass this.

Commissioner Mikulina asked Mr. Woods-Bateman between the January 10 meeting and today, if he has had a chance to meet with Mr. Tutto of the Ethics Commission regarding the proposal? Mr. Woods-Bateman responded no. Commissioner Mikulina he asked this because at the January 10 meeting Commissioner Lendio asked questions and was concerned about the length, Chair Takaki asked some questions and Commissioner Mikulina asked Mr. Woods-Bateman to meet with Mr. Tutto to work out some of the issues. Mr. Woods-Bateman responded he did send materials to Mr. Tutto and said they should talk about it but didn't hear any word after that. Mr. Woods-Bateman stated when he first proposed the amendment before sending it to the Commission, he sent copies to Mr. Tutto.

ACTION:

Commissioner Lendio moved to approve Proposal 41, Commissioner Meder seconded that motion. No discussion followed.

AYES: TAKAKI, MEDER - 2

NOES: CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MIKULINA,
MYERS, PACOPAC, SULLIVAN - 10

ABSTAIN: TOM - 1

MOTION FAILED

PROPOSAL 75 – Ethics Commission; Include the prohibition against Ethics Commissioners taking an active part in political management or political campaigns set forth in the Hawaii Constitution Article XIV.

The following individuals testified:

1. Chuck Totto, Executive Director and Legal Counsel, Ethics Commission

Written testimony:

1. Chuck Totto, Executive Director and Legal Counsel, Ethics Commission
2. Tom Heinrich

Chuck Totto testified in opposition because it has already been taken care of and is stated in the Constitution Article XIV and in the ROH Section 3-6.9 also limits as the proposal would the political activities of Ethics Commissioners.

Chair Takaki asked Corporation Counsel in previous written testimony it stated there's already an ordinance that prohibits the Ethics Commission from political campaigning but recalls hearing that it may still be necessary to pass the proposed amendment. Deputy Corporation Counsel Kawauchi responded the Corporation Counsel submitted the proposal for consideration as a housekeeping item. She stated it's true that the prohibition exists in the ordinance but the ordinance would be illegal but for the Hawaii Constitution. She went on to say the ordinance could not prohibit something that the charter does not prohibit, just the way the structure of how city government works. Deputy Corporation Counsel Kawauchi stated in this instance because it's prohibited in the Hawaii Constitution, the ordinance can stand and their office was in a position that the city should clarify in the charter that the prohibition exists.

ACTION:

Commissioner Lendio moved to approve Proposal 75, Commissioner Hirano seconded that motion. No discussion followed.

AYES: TAKAKI, CHANG, COFFEE, HIRANO, KAWASHIMA, MIKULINA,
MYERS - 7
NOES: GRAU, LENDIO, MEDER, PACOPAC, SULLIVAN, TOM - 6

MOTION PASSED

CATEGORY 2: BUDGET, COUNCIL, AND OTHER PROCEDURES

PROPOSAL 1 - Salary Commission; Amend provision regarding Council review of Commission findings.

The following individuals testified:

1. Tom Brower, Executive Secretary, Honolulu Salary Commission

2. Barbara Marshall, Councilmember, Honolulu City Council

Written testimony:

1. Barbara Marshall, Councilmember, Honolulu City Council

Tom Brower testified in support. He stated the Commission would like to stand on their previous written testimony submitted at the March 28, 2006 Community Meeting in Kapolei.

Councilmember Barbara Marshall testified in support and stood on her written testimony.

ACTION:

Commissioner Lendio moved to approve Proposal 1, Commissioner Chang seconded that motion. No discussion followed.

AYES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MEDER, MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM - 13
NOES: NONE - 0

MOTION PASSED

PROPOSAL 34 - Budget; Administration and enforcement of the executive capital budget ordinance -- lapse in 12 rather than 6 months.

The following individuals testified:

1. Mary Pat Waterhouse, Director, Department of Budget and Fiscal Services
2. Tom Heinrich

Written testimony:

1. Mary Pat Waterhouse, Director, Department of Budget and Fiscal Services

Mary Pat Waterhouse testified in support. She read her written statement into the record.

Chair Takaki asked how was 24 months chosen as opposed to 36 or 48? Ms. Waterhouse responded the State has 24 months as their time frame. She stated the longer the better but they could live with 24 months. Chair Takaki asked that the proposal would help the city administration address the sewer problems the city is facing now? Ms. Waterhouse responded yes.

Tom Heinrich testified in support. He added the extended period of time would allow for greater coordination with some of the other Federal and other funding sources that are not known based on the nature the event may occur at the time the City Council is considering the budget. This allows for more flexibility.

Commissioner Hirano asked Ms. Waterhouse for clarification regarding the State extension for two years. Ms. Waterhouse responded they are on a biennial budget. In some cases its two years in some cases its three years. Commissioner Hirano clarified the 24 months is not inconsistent with State policy.

ACTION:

Commissioner Lendio moved to approve Proposal 34, Commissioner Chang seconded that motion. Discussion followed.

Chair Takaki clarified he would be voting in favor because he believes it would help coordinate improvements needed to the sewer system and other long term improvements.

AYES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MEDER, MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM - 13
NOES: NONE - 0

MOTION PASSED

**** PROPOSAL 52** - Budget; Specify that the Mayor may sign or not sign a budget bill before exercising line-item veto authority.

The following individuals testified:
NONE

Written testimony:
NONE

ACTION:

Commissioner Lendio moved to approve Proposal 52, Commissioner Pacopac seconded that motion. Discussion followed.

Commissioner Mikulina stated he didn't like the proposal originally because the essence took away one of the actions that the Mayor could exercise, which is to not sign the budget bill but selectively deleting certain elements expressing his displeasure with some elements. He went on to say since the amendment at the last meeting it retains all three options the Mayor has and will be supporting.

Commissioner Lendio stated she wished the Mayor's office or the Administration testified on the proposal if they wanted the proposal to pass. She went on to say her inclination is if there is no real support from the administration then she'd be inclined to allow the proposal to move forward.

Commissioner Grau asked the Commissioners if this proposal really essential or is this one they could leave out. Commissioner Tom responded he had the same question earlier today and was told there was some confusion that existed within the city when

Mayors exercise their rights to do a line item veto but not sign the bill. He went on to say there have been differences of opinions between the Administration and the Legislative Branch of the City. Commissioner Tom stated he thinks this charter amendment is important to clarify that confusion and to preserve the rights of the Mayor to be able to sign the bill, not sign the bill or veto the bill entirely while doing a line-item veto. Commissioner Lendio commented while she respects Commissioner Tom position, she stated she appreciated Mr. Totto's candidness on the ones he felt should go forward and the ones he felt weren't important. She went on to say if the Administration feels strongly about this then she'd like to hear from them. If not then her inclination is to listen and heed Commissioner Grau's concerns stated earlier.

Commissioner Pacopac asked Hal Barnes from the Administration to respond on behalf of the Administration. He asked Mr. Barnes in respect to Proposal 52 if the Administration would like the Commission to put the proposal on the ballot or not. Mr. Barnes responded this stemmed from an issue where the previous Mayor claimed that a line-item veto from the Capitol Budget and didn't sign the bill. He went on to say they've been advised by the Corporation Counsel that they could not support that issue. Commissioner Lendio asked Mr. Barnes if they would like the Commission to move the proposal forward or if it was okay for the Commission to move on the next proposal? Mr. Barnes responded to move on to the next proposal.

AYES: MIKULINA, MYERS, PACOPAC, TOM - 4
NOES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MEDER, SULLIVAN – 9

MOTION FAILED

PROPOSAL 53 - City Council; Allow the Council to designate which Councilmember will serve as Council chair and presiding officer pro tempore when both the chair and vice-chair are absent or disabled.

The following individuals testified:
NONE

Written testimony:
NONE

ACTION:

Commissioner Lendio moved to approve Proposal 53, Commissioner Meder seconded that motion. Discussion followed.

Commissioner Coffee asked if this could be considered a housekeeping amendment? Chair Takaki responded it could after they vote on all the proposals today and May 10th, they'll decide which ones they would like to combine.

Commissioner Hirano stated they had testimony at previous hearings from several Councilmembers stating this is a very important measure. Commissioner Myers stated they heard from Council Chair Dela Cruz on two occasions. Chair Takaki stated yes on this proposal and probably in his written testimony.

Commissioner Lendio stated the same as she did for the previous proposal that if the Council feels very strongly about this and would the Commission to move this proposal forward, she wished they would come to let them know at this point. But if something nice to have but they have other proposals they like better than this one, then she'd like to hear that as well. Commissioner Lendio stated her inclination is not to move this forward without some strong stand by the City Council that they would like this.

Councilmember Marshall explained that under the Council procedures, once someone has given testimony on any given bill, they accept that testimony as carrying forward. She went on to say if Council had testified on this proposal before, the Councilmembers would assume the Commissioners would include that testimony in their deliberations. Councilmember Marshall clarified because of the hours that the Commissioners put in, she thinks most of the Councilmembers didn't want to testify over and over again on the same things. She went on to clarify by way of explanation, that's probably why they are not getting a lot of testimony on the Council items. Commissioner Lendio asked Councilmember Marshall if she knew if this proposal was essential for the operations of the City Council? Councilmember Marshall responded she doesn't know. She went on to say she knows they have procedures which they can appoint and thinks this proposal to clarify and Corporation Counsel might be able to answer. She stated she wanted to explain why the Commission might not have repetitive testimony on some of the proposals.

Commissioner Lendio commented these two meetings are very critical and needs some guidance that affect the City Departments, City Council and their operations in terms of they support the proposal or not. She went on to say without that type of support in showing the support, her inclination would be to not to move this proposal forward. Commissioner Grau stated he agrees with Commissioner Lendio.

Commissioner Myers stated he doesn't think the City Council would rupture if the Commission does not pass this proposal. He does know Council Chair Dela Cruz testifying before the Commission and has three written testimonies in support. He went on to say he thinks it's more of a procedural to keep things moving on an even keel and moving forward on a good basis and would be supporting this proposal.

Commissioner Mikulina asked Corporation Counsel for guidance on criteria on what they can put into housekeeping and wanted to know if there is any legal basis to determine substantive versus not substantive matters. Deputy Corporation Counsel Kawauchi responded she doesn't know if they can impose a definition on the Commissioners but stated her understanding is that housekeeping would be non-substantive issues. She went on to say what the Commission is leaning towards is grouping the questions together as one vote and be concerned to include something that they may raise policy issues in a group that would defeat the other they include in that group. Commissioner Mikulina then asked Deputy Corporation Counsel Kawauchi in her opinion does she think allowing the Council Chair to designate a temporary Chair a substantive policy or

procedural? Deputy Corporation Counsel Kawauchi responded she doesn't think its policy because it's already provided in their Council rules. She went on to say she thinks the issue was the Council has to designate this each time it occurs and wants to avoid that by having the Charter allowing them to do it for one period or until it's revised.

AYES: COFFEE, HIRANO, KAWASHIMA, MYERS - 4
NOES: TAKAKI, CHANG, GRAU, LENDIO, MEDER, MIKULINA, PACOPAC,
SULLIVAN, TOM - 9

MOTION FAILED

PROPOSAL 54 - Ordinances; Clarify that amendments to existing codified ordinances may be made by the City Council by reference to the codified provisions, rather than by reference to the numbered ordinances that may be enacted.

The following individuals testified:

1. Tom Heinrich

Written testimony:

NONE

Tom Heinrich testified in support. He stated this would apply as a housekeeping measure. He goes on to say this proposal would make the legal research a lot easier and match up to what they do for State and Federal measures.

Commissioner Mikulina asked Mr. Heinrich if there was any concern of losing the legislative intent or losing the history when there is only the Section and not the Ordinances or bills referenced? Mr. Heinrich responded for him personally no. For doing legal research, if they were going to make certain references to the background, the history or legislative intent, then they would have to speak to that very directly. He went on to say trying to make amendments to resolutions without having to go back into that legislative history in that discussion, he stated it's a lot easier to be able to make reference to the provision that they now wish to amend. Rather than having unnecessary very long citations tracking how they got there in the first place, when they can take care of that simply by one sectional reference. Mr. Heinrich stated all the information is there and can be researched. He stated it's a lot easier to do it by the simple reference to the section.

Commissioner Tom asked Mr. Heinrich for clarification. Commissioner Tom stated what the proposal does is currently when amending a bill they list out the entire section and show where they want to amend the section of the law? Mr. Heinrich clarified right now they would have to identify the previous bills or resolutions by number and year of adoption as compared to simply making reference to ROH ___ which is a much more abbreviated way of accomplishing the same goal.

Commissioner Meder asked if there was a provision that allowed the Council to handle this procedural detail rather than having it in the Charter? Mr. Heinrich replied his personal interpretation of looking at the Charter, the Council cannot make that shorthand

reference. He goes on to say in its own legislative document all of that needs to be laid out as compared to a bill before the legislature, for instance comparing HRS to ROH they can accomplish the same means in a much more direct and less complicated manner.

Chair Takaki asked Corporation Counsel for their comments.

Deputy Corporation Counsel Spurlin responded because the language is specifically in the Charter, they would have to amend the Charter.

Commissioner Grau noted that he finds the amendment difficult to discern and not sure if part of the general populous to understand the proposal and finds it difficult to vote for.

Commissioner Mikulina commented that he's slightly nervous but they lose some of the history when they are not included. He stated experience with years at the legislature it's instructive to know what happened previously. He also noted to not lose sight that the Council can propose charter amendments.

ACTION:

Commissioner Lendio moved to approve Proposal 54, Commissioner Grau seconded that motion. Discussion followed.

Commissioner Lendio agreed with Commissioner Mikulina.

Commissioner Sullivan stated she would be voting against the proposal.

AYES: NONE - 0
NOES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MEDER, MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM - 13

MOTION FAILED

PROPOSAL 77 – Royal Hawaiian Band; Delete the reference to Royal Hawaiian Band in "Appointment, Confirmation and Removal of Officers and Employees".

The following individuals testified:

1. Barbara Marshall, Councilmember, Honolulu City Council
2. Ed Michelman, Friends of Royal Hawaiian Band

Written testimony:

1. Tom Heinrich
2. Barbara Marshall, Councilmember, Honolulu City Council
3. Ed Michelman, Friends of the Royal Hawaiian Band

Councilmember Marshall asked the Commission to move this proposal to the May 10th meeting because there is an amendment she would like the Commission to consider. She commented she thinks it is very important to put qualifications for the bandmaster

into the Charter. She stated they attempted to put it into the Ordinance but was advised by Corporation Counsel that qualifications needed to be put into the Charter in order to be amended in the Ordinance. Councilmember Marshall this amendment is for clarification and would be for clarification for future bandmasters. She stated it's very important for the nature and quality of the Royal Hawaiian Band. She went on to say if the Commission would not consider to defer and consider her amendment, she asks the Commission to defeat the proposal in its entirety because the Council needs to retain the confirmation of the bandmaster. Councilmember Marshall stated this was a highly controversial issue when this administration began and have been made aware there are still many problems within the band and states it is very important that Council retain at least its confirmation. Chair Takaki clarified if the Commission does not amend the proposal as she requested that they defeat the proposal? Councilmember Marshall responded the amendment is really important and urged the Commission to do this, but if the Commission does not want to move this then it would be a bad thing to consider this as a housekeeping proposal and to take away the confirmation of the Royal Hawaiian Bandmaster away from the Council.

Ed Michelman testified on behalf of the Friends of the Royal Hawaiian Band. He read his written testimony into the record.

Commissioner Mikulina asked if he supported Councilmember Marshall's proposed amendment? Mr. Michelman replied yes he supports the portion in which the qualifications of the bandmaster are required in the Charter. He stated he has questions about removing as a department of the City and County of Honolulu and feels that amendment should also be included. He noted he would support Councilmember Marshall's suggestion without reservations. Commissioner Mikulina clarified Councilmember Marshall's proposing to delete the entire proposal and replace with her amendment. Councilmember Marshall replied yes.

ACTION:

FIRST MOTION - Commissioner Myers moved Proposal 77 to be deferred to the May 10th meeting to consider Councilmember Marshall's proposed amendment, Commissioner Tom seconded that motion. Discussion followed.

Commissioner Pacopac asked Corporation Counsel what is the purpose of Proposal 77 as currently stated? Deputy Corporation Counsel Kawauchi asked for time to research the proposal.

Commissioner Chang asked for clarification regarding if the proposal was defeated, therefore would retain the authority by the Council to the appointment?

Deputy Corporation Counsel Kawauchi stated she was unfamiliar with the earlier Corporation Counsel issued opinion that the testifier referred to, but her position earlier had been that the Royal Hawaiian Band is not a department. She went on to say as a housekeeping matter, the inclusion of the Royal Hawaiian Band director in this provision that address department heads and the Managing Director with respect to the Council's confirmation was inappropriate and that if the Commission's desire was to retain the authority of the Council to confirm that it should actually be put in the section dealing

with the Royal Hawaiian Band as exist for the Executive Secretary of the Neighborhood Commission. That position is not included in this section of the charter but the section that deals with Executive Secretary of the Neighborhood Commission that it would not be intended to remove the Council's authority to confirm but that it be placed in the more appropriate provision of the Charter.

Commissioner Tom commented that Councilmember Marshall proposed that Section 6-105 be amended. He went on to say the Commissioners would probably need to amend the section to delete the confirmation and adding in to section 6-105. Deputy Corporation Counsel responded that action of taking it out of 4-104 and placing it in 6-105 in her opinion would be housekeeping. She noted the other amendment that is proposed by Councilmember Marshall for 6-105 would be substantive.

Commissioner Lendio stated addressing the motion to defer she would be voting against the motion because in looking at Proposal 77 she's not in favor. She stated this really needs more study by the public if there are going to be requirements in the qualifications, she feels the Council needs to address that in a separate charter amendment perhaps in 2008. She went on to say that she believed there would be an unprecedented turnout if they change the qualification for the band director in light of what occurred during the last confirmation process. Commissioner Lendio stated she does not feel qualified as a Charter Commission member to make that decision. She stated she would be voting no to defer as well as on the proposal and thinks this should be a Council issue and not a Charter Commission issue.

Commissioner Grau stated he would be following Commissioner Lendio's rationale on both votes.

Commissioner Tom stated he would be supporting the motion to defer. He feels it is important that Council confirms the leaders of the departments whether they are called departments or not, it's something they could discuss at the next meeting. But to not defer would say that the Band Director does not need to be confirmed which he thinks is a more important issue that needs to be addressed. Commissioner Tom stated he thinks this is a charter issue because the charter states what the qualifications are of the directors.

Commissioner Lendio commented she agrees with Commissioner Tom regarding it is a charter issue but feels the City Council needs to address this separately from this Charter Commission. She stated she feels they should hold extensive hearings on the qualifications for the Band Director because of the turnout that occurred at the last confirmation process. She went on to say it should be within the purview of the City Council to make the determination on whether or not there are new qualifications that are to go on the Charter and she thinks they should retain the confirmation process that is in the existing charter. For these reasons she would be voting no on the amendment as well as the proposal.

Commissioner Myers asked Chair Takaki if he could ask the previous speakers if they had anything further to add. Chair Takaki approved.

Councilmember Marshall stated when the Council discussed the issue of qualifications of the Bandmaster in the last appointment as Commissioner Lendio pointed out, did get a healthy coverage and turnout. She went on to say the decision was made by the Administration that this should be a charter issue for the Commission because the Commission has the resources to have a Researcher and to really look into the issues on a broader basis than the Council and that's why it was supposed to come the Charter Commission. Councilmember Marshall urged the Commission to consider moving the Proposal forward to be amended. She stated she understands the Commissioners' concerns but the Council tried it once before and was told to leave it the Charter Commission and it has to be a Charter Amendment.

Commissioner Sullivan stated her concern is the Commission is past the point where the Commission did its best to go out to the public with the proposals they have had for some months now. She thought Councilmember Marshall's proposal is a substantive change and at the point where the Commission is at in their process, she doesn't know if it'll do justice with the procedures they have left in terms of getting enough public input. She asked Councilmember Marshall that if it is important and requires more public input, is it desired to try and push it through at this point? Councilmember Marshall responded she's remiss and assumed the Royal Hawaiian Band amendment before the Commission was including some of her suggested amendment. Councilmember Marshall stated she thinks it is very important but understood from Commissioner Sullivan's perspective regarding how far long within the process the Commission is. Councilmember Marshall addressed Commissioner Sullivan's concern regarding public input into her proposed amendment. Councilmember Marshall stated the Council has had a lot of public input and those testimonies are available to the Commission. She goes on to say the Council took great pains in drafting what they thought to be an ordinance change and gathered input from the Royal Hawaiian Band, Hawaiian Music Community and the Hawaiian Community itself.

Commissioner Mikulina asked Councilmember Marshall if the language she provided came from their deliberations? Councilmember Marshall replied yes and that was the language they drafted for the ordinance before they were told they're not able to do it at all because there were no qualifications in the Charter for the Bandmaster.

AYES: COFFEE, KAWASHIMA, MEDER, MYERS, TOM - 5
NOES: TAKAKI, CHANG, GRAU, HIRANO, LENDIO, MIKULINA, PACOPAC,
SULLIVAN - 8

FIRST MOTION FAILED

SECOND MOTION – Commissioner Lendio moved to approve Proposal 77, Commissioner Grau seconded that motion. No discussion followed.

AYES: NONE - 0
NOES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MEDER, MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM - 13

SECOND MOTION FAILED

Chair Takaki asked to take a 10-minute recess. Commissioner Lendio moved to approve for a 10-minute recess, Commissioner Pacopac seconded that motion.

****RECESS – 4:25 p.m.

****RECONVENED – 4:37 p.m.

PROPOSAL 78 – Civil Defense Agency; Delete the reference to Civil Defense Agency in "Appointment, Confirmation and Removal of Officers and Employees".

The following individuals testified:
NONE

Written testimony:

1. Tom Heinrich

ACTION:

Commissioner Lendio moved to approve Proposal 78, Commissioner Mikulina seconded that motion. Discussion followed

Commissioner Sullivan stated she supports this proposal and commented this should be a housekeeping matter. She stated it's similar to the HPD proposal and it has been litigated and the law is clear and the Charter Commission is cleaning up the language.

Chair Takaki asked Corporation Counsel for their comments. Deputy Corporation Counsel Kawauchi responded their office submitted this proposal. She stated they proposed this for two reasons, the Administrator of the Civil Defense is not a department head, secondly, it's a civil service position and having Council confirmation is really not appropriate for a civil service position.

Commissioner Coffee asked Corporation Counsel if this proposal fits in the housekeeping category? Deputy Corporation Counsel Kawauchi responded in her opinion yes.

AYES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MEDER, MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM – 13
NOES: NONE - 0

MOTION PASSED

** **PROPOSAL 91** - Property Taxes and New Fund; Set aside one-half percent (1/2%) of real property tax revenues for land and natural resources protection and one-half percent (1/2%) of real property tax revenues for affordable housing.

The following individuals testified:

1. Jim Tollefson, President, Chamber of Commerce of Hawaii

2. Rev. Dr. John Heidel, Ret. Minister, United Church of Christ, Former Chaplain of Punahou Schools, President of The Interfaith Alliance of Hawaii and Vice President of Family Promise of Hawaii
3. Betty Lou Larson, McCully-Moiliili Neighborhood Board/Catholic Charities Hawaii
4. Stephanie Whalen, President, Hawaii Agriculture Research
5. Alan Takemoto, Hawaii Farm Bureau
6. Dean Uchida, Executive Director, LURF
7. Tom Heinrich, Malama o Manoa
8. Margot Schrire, Chair, IHS – Partners in Care
9. Marjorie Ziegler, Executive Director, Conservation Council for Hawaii
10. Darlene Hein
11. Jonathan Scheuer, OHA
12. William Tam
13. Blake McElheny
14. Mary Pat Waterhouse, Director, Department of Budget and Fiscal Services
15. Josh Stanbro, Trust for Public Land
16. Ann Kobayashi, Council Budget Chair, Honolulu City Council

Written testimony:

1. Malia Ribeoro
2. Julia Steele
3. David Della Lena
4. Theresa Gomes
5. Brian Emmons
6. Lisa Harding
7. India Clark, President, The Coastal Society of Hawaii
8. Michelle Jaffe
9. Taylor Rock
10. Arlene Buchholz
11. Roya Dennis
12. Lisa and Ron Carter
13. Betty Lou Larson, Housing Programs Director, Catholic Charities Hawaii
14. Marjorie Ziegler, Executive Director, Conservation Council for Hawaii
15. Rev. Dr. John Heidel, Ret. Minister, United Church of Christ, Former Chaplain of Punahou Schools, President of The Interfaith Alliance of Hawaii and Vice President of Family Promise of Hawaii
16. Laura Thompson
17. Dean Okimoto, President, Hawaii Farm Bureau
18. Stephanie Whalen, President, Hawaii Agriculture Research
19. Margot Schrire, Chair, IHS – Partners in Care
20. Dean Uchida, Executive Director, LURF
21. Jim Tollefson, President, Chamber of Commerce of Hawaii
22. Josh Stanbro, Trust for Public Land
23. Emma Frias, Windward Homeless Coalition Interim
24. Clyde Namu`o, Administrator, OHA
25. William Tam
26. Randy Ching
27. Mary Pat Waterhouse, Director, Department of Budget and Fiscal Services

- 28. Barbara Marshall, Councilmember, Honolulu City Council
- 29. Betty Lou Larson, Chair, Housing/Homlessness Committee, McCully-Moiliili Neighborhood Board
- 30. Greg Schmidt

Jim Tollefson testified in opposition. He summarized his written testimony. He stated the Chamber of Commerce believes Proposal 91 could be made into law by ordinance or statute and need not be placed on the November election ballot or in the Charter. He goes on to say the Chamber of Commerce doesn't consider Proposal 91 as a core function of the City of Honolulu. He noted the City's core functions are divided into four categories; Public Safety and Welfare, Culture and Recreation, Community and Human Development and Citizen Participation, and General Government operations. Mr. Tollefson stated the City of Honolulu is not responsible for natural lands as the duty falls to the State and the City doesn't have a housing agency to work on affordable housing issues. Mr. Tollefson states it doesn't seem rational to amend the Charter with issues that don't correspond with the City's core services, managing or have jurisdictions over. He went on to say they are concerned about the taxation issue and with the sewer situation. He commented if money is going to be taken out of the property taxes, shouldn't that be applied to infrastructure and needs of the city and not for the purposes outlined in the proposal.

Rev. Dr. John Heidel testified in support. He commented the proposal has two concerns that affect the entire local community, preservation of land and the increasing housing crisis. He stated he thinks these concerns are important especially the future generations. He went on to say what the proposal offers feels is critical for the perpetuation for the good quality of life for everyone. Mr. Heidel stated the 20 different faith traditions he represents support proposal 91. He highlighted his written testimony.

Betty Lou Larson testified on behalf of McCully/Moiliili Neighborhood Board and Catholic Charities. She stated the Neighborhood Board submitted a resolution previously to the Commission and did not submit it again but is very concerned. She went on to say Honolulu is the 12th largest American city and can't say leave it to the state and we have to do something about the affordable housing problem. Ms. Larson states the City needs to mandate that the city has to do something, which is what the proposal does. She also testified on behalf of Catholic Charities and highlighted her written testimony.

Stephanie Whalen testified on behalf of the Hawaii Agriculture Research in support. She highlighted her written testimony.

Alan Takemoto testified on behalf of the Hawaii Farm Bureau in support. He read their written testimony into the record.

Dean Uchida testified on behalf of Land Use Research Foundation. He stated they support the intent of the proposal but the real question before the Commission is a core function or core service of the City. He went on to say if they are, does it warrant elevating it into the Charter? Mr. Uchida stated when putting a budget restriction in the Charter, the Council and Administration in the future would have that much less money to spend on pressing city needs such as the basic municipal services the County should

provide like sewer, water, police, fire. He went on to say based on that, he feels the proposal should not be put on the Charter but more through the budget process of the Council or the Administration.

Tom Heinrich testified on behalf of Mr. Chuck Pearson for Malama o Manoa and the Manoa Neighborhood Board. Mr. Heinrich stated Mr. Pearson had to leave but stated that Malama o Manoa adopted a resolution which supported the 1/2% idea of Real Property tax being used for land and natural resources protection, but did not have a position on the affordable housing aspect of the proposal.

Margot Schrire testified on behalf of IHS and Partners in Care in support. She read her written testimony into the record.

Marjorie Ziegler testified on behalf of the Conservation Council for Hawaii in support of Proposal 91. She stated this is an opportunity for Oahu to join Maui and Kauai County in trying to dedicate funds and leverage State and Federal Funds. She goes on to say if there is a dedicated portion of the Real Property Tax, we would be able to leverage State and Federal funds for both natural area protection/important agricultural land protection and affordable housing. Ms. Ziegler stated the proposal addresses two critical needs; protecting natural areas and affordable housing.

Darlene Hein testified in support. She commented her opinion of the proposal being done through the budgetary process and not through the Charter Commission is different than what others feel. Ms. Hein commented if it is part of the regular budget, this proposal would never happen because there are other basic city needs and there would never be a point in time when the City has extra money to put into affordable housing or protecting the land. She stated they talked about this issue from 20 years ago and there hasn't been any money set aside to do this. She went on to say the City currently does housing such as Federal Housing, CDBG Housing, Homes Housing and ESG Housing. She stated the City's Office of Community Services receives Federal funding every year, they monitor the housing, decides who would be building the affordable housing on Oahu. Ms. Hein commented the City does housing but they don't pay for them, the Federal Government pays for them.

Jonathan Scheuer testified on behalf of OHA in support. He went on to say affordable housing and the need to protect natural areas where Native Hawaiians can practice traditional and customary practices, which are two crucial needs of their community and directly goes to some of their core concerns. Mr. Scheuer expanded on their written testimony to discuss the two major criticisms raised today against Proposal 91. He commented the first criticism that was raised by two testifiers stating this is not a core function of the City and County of Honolulu. Mr. Scheuer argued that their testimony artfully points out public safety and welfare, cultural and recreation, and community and human development are three of the four core functions of the City. He goes on to say it's hard to believe that the protection of open space for people on the provision of housing for those who need it aren't ways to achieve public welfare when so many homeless people and others in the community. He added that if there's a concern that the City should not be in the housing business or the natural open space protection business, these monies doesn't mean the City would hold titles to the lands. Mr. Scheuer stated OHA is participating in a multi-agency effort to protect Waimea Valley.

He went on to say they would hold the title and the City, if it should all go well, would hold the conservation easement guaranteeing it gets protected as open space but won't be shouldered with the day-to-day burden of maintaining that area. Mr. Scheuer states the other criticism stating this proposal doesn't belong in the Charter primarily with the idea that the Charter should only talk about the very broadest of issues for the City. He goes on to say while there is some merit to that argument, he pointed out that 20 years ago when he was a Council Aide for former Councilmember Marilyn Bornhorst who proposed to set aside Real Property Taxes to slowly over time protect coastal land, which didn't pass. He stated the proposal would be looked on favorably if the Commission passes it and has confidence the voters would pass it. Chair Takaki asked Mr. Scheuer if he knew what the appropriation of funding amount is? Mr. Scheuer responded he didn't not have the figures available with him but he thinks the average has been about \$2-\$3 million dollars over the past three years which includes the appropriation for Waimea Valley for Oahu. He stated he would refer this question to Josh Stanbro of Trust for Public Land.

William Tam testified in support. He stated you need to have a long-term perspective when acquiring properties or doing long-term projects. He went on to say you can't do them on short-term funding and need to have a long-term view. Mr. Tam stated the critical things that have happened recently with the partnership that are happening on Oahu from Pupukeya, from Waimea and other areas depend upon a number of groups working together on that. He went on to say the dedicated funding give people assurance that they can plan for and not depend upon the idiosyncrasies of various budget processes with the City, State and Federal Government. Mr. Tam stated one of the reasons he feels this is a core function in the Charter like the provisions in the State Constitution, land banking for land issues is that you have to have a long-term view of how you would acquire lands to protect something. He went on to say if the Commission elects to a momentary budget decision, it would not happen. Mr. Tam stated that's one of the reasons the Federal Government created a Land and Water Conservation fund and funded that to do acquisition of areas as they arise. He noted as people do their planning and they know there's a source, they can go to other partnerships and build their partnership as what this proposal would do.

Commissioner Sullivan stated one of the earlier testifiers mentioned that preservation of natural resources should be a State function and not a County function and asked for his opinion. She added she wanted to know his opinion because he has history with the State DLNR that has responsibility for preservation of Natural Resources and what the issues are with respect to saying that should be a State function alone. Mr. Tam responded he was Counsel to the Water Commission and Land Board for 17 years. He goes on to say while the State has primary functions he doesn't think it's exclusive. He stated the County has parks, roadways, access for example the ROH Chapter 46 require public access both to the mountain and shoreline when they do subdivisions. So there are functions that are uniquely County and some that are uniquely State, but some are combined. He goes on to say they have to look at how each of the different groups could bring something to the table and thinks it could only happen frankly when they do that. Mr. Tam noted he doesn't look at it as only one agency's responsibility. He thinks one of the critical things with funding is the Federal government along with other government agencies look to join arrangements and are more convinced the public wants to do it when they see more people involved. He went on to say that is part of the

momentum to going to private foundations who wants to know there are sources out there and that they are not the only organization donating money.

Blake McElheny testified in support. He stressed the opportunity to allow the voters to have citizen participation on a proposal that would put a measure into perpetuity that would protect its important resources as well as public safety and welfare, cultural and recreation opportunities, community and human development. He encouraged the Commission to support the proposal. Mr. McElheny stated he traveled around the different communities across Oahu that there are strong core values around protecting areas as well as providing for families, which this proposal would do.

Mary Pat Waterhouse testified in opposition. Ms. Waterhouse read her written testimony into the record. Chair Takaki stated several of the previous testifiers stated if there was a dedicated source of funds, they would be able to leverage those funds by having it dedicated and available according to the Charter. He asked for her comments. Ms. Waterhouse responded they are able to do that now and gave an example of the 2007 budget they are putting aside one million dollars for matching grant funds.

Commissioner Grau clarified that Ms. Waterhouse is opposed to be able to give the voters a chance to vote on the proposal. Ms. Waterhouse responded she thinks this can be done by putting this in the ordinance so there is flexibility rather than putting it in the Charter which would hamstring the City for the next 10 years. Commissioner Grau asked what if a strong majority of the populace stated they want to do that? Ms. Waterhouse stated they could testify when the budget process is being done stating their support or not. Commissioner Mikulina asked Ms. Waterhouse if she was aware that the Council on a number of occasions has tried to establish a dedicated fund and has failed every time? Ms. Waterhouse responded she was not aware of that. Commissioner Meder clarified with Ms. Waterhouse that her statement pertaining the one million dollar set aside for matching grants are for any types of grants the City finds desirable and not specifically to the two issues in the proposals? Ms. Waterhouse responded yes. Commissioner Chang asked Ms. Waterhouse if the proposal was adopted would she consider that amount for a tax increase. Ms. Waterhouse responded there's a possibility.

Commissioner Sullivan asked Ms. Waterhouse to clarify the numbers they are talking about. Commissioner Sullivan stated the numbers they were given is ½% in fiscal year 2005 would come to about \$2.5 million dollars. Ms. Waterhouse responded that sounds right. Commissioner Sullivan went on to say that is based on Real Property Tax collection of about \$500 million. Commissioner Sullivan asked Ms. Waterhouse to clarify the one percent they are talking about would not be assessed against the sewer fees which are for sewer improvements? Ms. Waterhouse responded correct it's only Real Property Tax revenues. Commissioner Sullivan clarified it would not come out of the highway fees which are for roadway improvements? Ms. Waterhouse responded correct but the highway expenses always come short so the general fund subsidizes the highway fund.

Chair Takaki asked Ms. Waterhouse regarding her January 6, 2006 written testimony with Ms. Debbie Morikawa stated in terms of the affordable housing ½% dedicated to that there is no mechanism in place to distribute revenues collected for that purpose.

Ms. Waterhouse responded because there is no housing department but the City is providing it through CDBG and Federal funds.

Commissioner Coffee stated for perspective he asked Ms. Waterhouse to give the Commission an idea what the current sewage crisis has on the total amount of funds available for the sewer repair and maintenance. Ms. Waterhouse responded in order to build the temporary bypass, it would cost \$18 million. She goes on to say to do the fix that they did during that week was about \$2 million.

Josh Stanbro testified on behalf of Trust for Public Land in support. He stated he thinks it is appropriate to be in the Charter and by looking at Maui and Kauai who looked into detail on where to put this in the ordinance or the Charter, they decided to put it into the charter for specific reasons that have been articulated today. He went on to say the core responsibility does touch on the health and welfare that this runs into four square with the run off from development and other areas that should be protected. Mr. Stanbro stated he wanted to clarify the numbers that he researched. He noted there looked like there was \$6.1 million spent on land conservation over the past four years, which averaged just under \$1.5 million or so and would set aside \$2.5 million. He went on to say importantly it would set it aside at a regular amount every year so that it would be there to draw on and not have get frantic when something does come up. He noted he found about \$3 million a year spent on CDBG grants in terms of Community Services House as Darlene Hein mentioned which are all federal monies and not the City & County funding. He stated there is an independent firm that is doing polling right now but the final results are not available at this time. The initial results are in favor of this particular proposal. Mr. Stanbro commented in terms of the tax increase, Maui and Kauai did this and set aside certain percentages and have not raised taxes in the four years afterwards. Commissioner Chang asked Mr. Stanbro in reference to the other two counties who have never raised taxes in the four years it has been in operation. Commissioner Chang asked Mr. Stanbro if he would say it was partly because of the land valuation has substantially increased so that even though tax rate remained the same, the revenues increased? Mr. Stanbro responded that may be contributing to it but it also has shown through on the mainland and other jurisdictions that passed it before this. Mr. Stanbro went on to say that you often find the same ability to adjust to a small dedication as well as there is a willingness in mainland jurisdiction to pass it even if it includes the tax increase right upfront. Commissioner Chang stated his concern about the issue about this being a tax increase, particularly as the Council may be bound by those restrictions if they earmark those monies. Commissioner Chang went on to say there may be a time and will be some time historically that has been the case where there has been a downturn in the valuation of property and the Council had to make adjustments in order to generate the revenues that they need to fund basic city services. He went on to say he doesn't know that that's a rational argument in support of the proposal because there will be a time where the conditions would change. Commissioner Chang stated he is concerned for those who are on a fixed income, there was a lot of testimony heard earlier when there was a proposal to put a fix on the real property tax problem that was created recently because of the dramatic rise of the real property tax valuations. He reiterated for those that are on fixed income, this is a serious issue for them. Particularly if they are going to be faced with a Council that would say the City is revenue short and has to raise taxes. Mr. Stanbro responded there are two answers, one is that it is a percentage set aside rather than a dollar amount. As the

property values begin to decline again, the amount of money set aside would be less also so it's dovetailed to what the market is doing rather than providing a fixed amount. Mr. Stanbro agrees that people on fixed income have reasons to be concerned especially about housing prices on Oahu and thinks that's why there is so much support for this.

Councilmember Ann Kobayashi stated she has worked with many people who have testified before her to preserve our lands and worked with many people to add more affordable housing. She stated as the City Council Budget Chair she thought it would be irresponsible if she did not bring the information about bills they have passed a few months ago. This bill changes the way the City collects the property tax. Councilmember Kobayashi clarified rather than bringing in a whole lot of money at a certain rate and then deciding ways to give back that money or ways to spend that money, the City would now bring in only what the City needs to run the City and not a penny more. She went on to say Bill 12, which was also passed recently, and Mayor allowed to become a law, they hope to reduce property rates for many residents who are suffering with the high assessments. Councilmember Kobayashi stated when the assessments go up then the property rates go down and when the assessments go down then the rates go up. She went on to say the City would not be collecting extra money just the amount needed to run the city. She stated they would add the cost of living increases, salary increases but nothing more so they can keep the rates down especially those on fixed incomes that are having a difficult time. She stated she thought it would be responsible of her as Budget Chair to bring that information about Bill 12, which is a new way, they would be collecting property tax in August. Commissioner Chang asked Councilmember Kobayashi how would Proposal 91 affect this? Councilmember Kobayashi responded they would have added another one percent to the amount it would cost to run the city. So the rates would be a little higher. Commissioner Chang clarified there would be an increase. Councilmember Kobayashi responded yes because it would be a cost to run the city. She stated they tried to make as many cuts as can this year to bring the rate down. They are trying to limit the amount of debt services but because of the floods and the sewer problems that is going to add to the debt service. She stated they are having a difficult time trying to help the residents who are crying for a property tax relief.

ACTION:

Commissioner Lendio moved to approve Proposal 91, Commissioner Grau seconded that motion. Discussion followed.

Commissioner Grau stated he would be voting in favor of this proposal. He clarified they won't be voting to impose any tax on any one but voting on giving the people the chance to vote it on to impose it on themselves. He went on to say it gives the people a chance to express their vision of responsibility. Commissioner Grau commented it's really irrelevant to the Charter in that the Charter or the Government itself is built around providing for the health and well being of its citizens. He goes on to say this amendment speaks directly to the health and well being citizens today and also citizens of tomorrow. He stated this isn't precedent setting, two other counties have done this, two other

counties have made an expression of their value and feels they should let the people of Oahu decide on this issue.

Commissioner Hirano stated she commends Commissioner Grau for his thoughts and belief but would be voting against this proposal. She commented she believes in the Charter as being all broad policy document. She clarified she's not against the homeless, not against open space conservation and not against affordable housing which are good issues. But she truly believes being micromanaging and ascertaining how our real property taxes should be spent and how it needs to be allocated goes beyond what the Commission is tasked to do. Commissioner Hirano stated she thinks it should be done by ordinance and these issues are far reaching beyond the county. She addressed the issues about other counties have done it, Hawaii have home rule and each county is different. She goes on to say we are not Maui County and Kauai County, we are Honolulu County and we do what we need to do to oversee our problems.

Commissioner Chang stated he also commends Commissioner Grau for the statement about basis for the reasons behind the proposal. He went on to say he applauds those who have been supporting the proposal quite vigorously and the reasons thereof. Commissioner Chang shared his background on why he has the perspective he has. He stated he spent 10 years in State Government, more than half was spent as the Director of the Department of Social Services and Housing and also spent four years as City Managing Director. Commissioner Chang stated from the perspective of the State experience, there are vastly more resources available to address the issues of housing as well as land conservation. He stated when he was there, there was a \$100 million dollars of general obligation bonds that were available on a revolving basis. In addition to that, the State has the authority and has exercised it quite broadly in authorizing special purpose revenue bonds that make low cost loans to people who meet the qualifications. Commissioner Chang stated from the City perspective that is not a function of the City. He went on to say the Charter is very specific but State Legislation founded the Charter's foundation and when the State Legislation granted the powers to the City it was very specific in what it considered to be the duty of the City. He stated he thinks they would hamstring much of the legislative prerogative that be left with the City Council and the Administration in determining what the City's priorities are. Commissioner Chang stated there isn't an unlimited source of funds. He went on to say we have in recent years enormous experience available to us about people screaming for tax relief. He noted the recent rise in Real Property tax has cause anguish amongst a lot of people, specifically those who are on fixed or low income, or on Social Security. He stated he doesn't know how the public would accept another proposal that would have the effect of raising their Real Property tax and that's why he would be voting no on this proposal.

Commissioner Mikulina stated he would be supporting Proposal 91 for various reasons. He stated there has been overwhelming testimony in support from the public for this proposal out of the 108 proposals that have gone through the process. He commented that they should pay attention to the when the Farm Bureau, Hawaii Ag Research Corporation, Catholic Charities, Habitat for Humanity are all on the same page. He went on to say the Commission is doing something right when all these organizations are in support for the same reasons. Commissioner Mikulina mentioned this proposal has been attempted three times and failed every time. He noted the Trust for Public Land

testified the polling data they are collecting through an agency, there was a two-thirds of the public that supports the proposal. Commissioner Mikulina stated they've heard dedicated funding works because they can operate in a clutch when they need the funds they can go to the landowners and have the resources available. He commented he thinks having a land fund is the preferable approach to protecting land with resource value. He continued to say the least preferable approach is litigation and fighting with landowners. He went on to say we see it happening in Turtle Bay, Kakaako and across the island where they have blueprints and big plans and Community groups just like it and would be nice to act proactively, keep the landowner happy and everyone happy by having the resources to act. Commissioner Mikulina commented the matching and the leverage which they've heard it through testimony that the City is throwing away good money because they can't get it because they don't have that match. He went on to say the State fund that was passed requires a match before they can use it. He stated the County needs to go the Council every time just to have that money in place so they can leverage those funds and plan to have it in place in the future.

Commissioner Myers stated he's sitting on the fence and has some problems with putting this in the Charter dedicating money. He went on to say this proposal will raise taxes and there's no question in his mind. He noted on the other hand he couldn't think of any project or services that are more core than the well being for the people for the State of Hawaii. Commissioner Myers stated although he was sitting on the fence, he is convincing himself to vote in favor of the proposal.

Commissioner Coffee stated from the onset he was in favor of this proposal but also shared some of the reservations some of the Commissioners share. He went on to say because of the overwhelming public participation in support for the bill, and as Commissioner Grau stated; if the people want to vote for a tax increase for themselves that's another thing. Commissioner Coffee commented the issue would be to assure the ballot initiative is understood and there would be a lot of advertising on both sides so it would be important that the people understand that that is what they would be doing. He went on to say because of that input and philosophically he's against the proposal he would be voting in favor to let the voter's decide.

AYES: TAKAKI, COFFEE, GRAU, LENDIO, MEDER, MIKULINA, MYERS,
SULLIVAN - 8
NOES: CHANG, HIRANO, KAWASHIMA, PACOPAC - 4
ABSTAIN: TOM - 1

MOTION PASSED

CATEGORY 3: ELECTIONS AND REPRESENTATION

PROPOSAL 5 - Elections; Eliminate the first special election when there are only two candidates for an office.

The following individuals testified:

1. Peter Carlisle, Prosecuting Attorney, Department of the Prosecuting Attorney

2. Tom Heinrich

Written testimony:

1. Peter Carlisle, Prosecuting Attorney, Department of the Prosecuting Attorney
2. Barbara Marshall, Councilmember, Honolulu City Council
3. Tom Heinrich

Peter Carlisle testified in favor. He stated their needs to be two elections when there are multiple people and need to have it at the general election when there are only two people. Mr. Carlisle drew a scenario on the white board to show the Commissioners his point of his testimony. He stated in the 2004 election there were approximately 181,582 people who voted in the primary election. In the general election there were 300,215, which is approximately 120,000 extra people. He noted the primary election tends to attract partisan voters and the general election attracts everyone. Mr. Carlisle stated we want the elected officials to be elected by the most number of voters possible, therefore if there are only two candidates, stopping it at the primary election eliminates 120,000 people from voting. He went on to say why there should be two elections if there are multiple people. He used three people as an example. He stated if they do the method of not going on to a general election, there may be a result that two candidates maybe eliminated despite their combined vote is more than what the winning candidates vote was. Mr. Carlisle stated for those reasons he feels this is important and it does not only apply to the Prosecutor's office but also applies to the Mayor and the City Council. He went on to say it was not thought of at the time but through experience shows that it should not left with two people at the Primary Election level of participation but should always go to the General Election level of participation. He goes on to say it will enhance voter participation and democracy.

Commissioner Myers commented to Mr. Carlisle the scenario he presented to the Commission could happen in the Presidential or any partisan election because there are more than two parties often. He went on to say there could be a candidate elected by less than the majority of the vote. Mr. Carlisle responded it could happen but it's unusual and typically the third candidate doesn't have enough to become the person to be in charge of asylum. Commissioner Myers asked Mr. Carlisle why in the scenario is it possible? Mr. Carlisle responded in this case in the Primary Election are people who vote on a partisan level and a non-partisan level at the General Election. Commissioner Myers stated his point was he thought all three should end up in the General Election. Mr. Carlisle responded you would not be able to do that because there's that potential of 34%, 33% and 32% and not the majority. Commissioner Myers commented it happens in the presidential election. Mr. Carlisle responded there's a difference between a non-partisan and partisan election. He goes on to say some people would look for "R" or "D" to vote for and don't care as long as it's a "R" or a "D" and votes for that person. He stated when someone is running as an Independent, they could have people who have "R's" and "D's" voting for the same person.

Commissioner Tom asked Mr. Carlisle to clarify in the Primary Election in the first election that the person who wins has to have the majority of the vote? Mr. Carlisle asked Commissioner Tom if he was asking about non-partisan elections? Commissioner Tom responded yes. Mr. Carlisle explained in the non-partisan Primary

Election the winner needs to have 50% plus one. If the candidates have less than 50% then there is no winner and only the top two candidates move on. Commissioner Tom asked Mr. Carlisle if he was in opposition to Proposal 5? Mr. Carlisle responded he is in favor of Proposal 5 because it carries it to the second special election when there are only two candidates and not only to the Primary Election. But if there are more than two candidates, to leave the elections the way it currently is. He clarified if there are only two candidates it's done at the first special election that coincides with the Primary Election. This proposal would move this special election to the General Election when there are only two candidates so that there is a bigger voter pool.

Commissioner Sullivan clarified with Mr. Carlisle that he does not support the Charter the way it currently is? Mr. Carlisle responded yes. Commissioner Sullivan asked Mr. Carlisle what is the problem with the Charter? Mr. Carlisle responded the problem with the Charter as it currently stands is if there are only two candidates the election is finished in the Primary Election. If there are three candidates and no one gets the 50% plus one vote, it moves on into the General Election. In November there are 300,000 voters and October there is only 120,000 voters.

Commissioner Myers stated from a financial standpoint it saves the candidates money from running in the first special election and likes the proposal.

Commissioner Lendio asked Mr. Takahashi from the Clerk's Office if they have any position from their office? Mr. Takahashi responded no.

Tom Heinrich testified in support.

ACTION:

Commissioner Lendio moved to approve Proposal 5, Commissioner Meder seconded that motion. Discussion followed.

Commissioner Sullivan asked Corporation Counsel in the Proposal under Subsection C it talks about the situation if there are three candidates, she asked to clarify her understanding that if any candidate receives the majority of the vote in the first special election he or she is deemed elected. Deputy Corporation Counsel Kawauchi responded yes 50% plus one. Deputy Corporation Counsel Spurlin clarified the proposal merely eliminates the first special election if there are only two candidates and automatically moves to the second election.

AYES: TAKAKI, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MEDER,
MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM – 12
NOES: CHANG – 1

MOTION PASSED

PROPOSAL 9 - Neighborhood Commission; Establish direct relationship between Commission and Executive Secretary

The following individuals testified:

1. Tom Heinrich
2. Michelle Kidani, Executive Assistant, Neighborhood Commission Office

Written testimony:

1. Tom Heinrich

Tom Heinrich testified in opposition and referred his comments to his written testimony.

Michelle Kidani testified on behalf of the Administration in opposition of this proposal specifically because the proposal removes the appointing power from the Mayor to appoint the Executive Secretary and gives it to the non-elected Commissioners.

ACTION:

Commissioner Lendio moved to approve Proposal 9, Commissioner Grau seconded that motion. No discussion followed.

AYES: NONE - 0
NOES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MEDER, MIKULINA, MYERS, PACOPAC, SULLIVAN – 12
ABSTAIN: TOM – 1

MOTION FAILED

**** [PROPOSAL 13](#) - Neighborhood Commission; Revise the Powers, Duties and Functions of the Neighborhood Commission.**

The following individuals testified:

1. Tom Heinrich
2. Michelle Kidani, Executive Assistant, Neighborhood Commission Office

Written testimony:

1. Tom Heinrich
2. Bill Wilson, Kailua Neighborhood Board

Tom Heinrich testified in opposition. He has submitted an amendment on pages three through seven in his written testimony that he feels is a much better proposal. He stated if the Commission would not further amend Proposal 13 he would urge the Commission to not pass the proposal. He commented they could go through the City Council and take more time as there are a number of things going on in the Neighborhood Commission Office. Mr. Heinrich noted on page three of his written testimony he listed other elements that needs to be considered if the Commission is willing to reduce the scope of the amendment, there is one that fits into an ethical framework that they may be well advised to consider now because it's a single sentence and would not be

confusing on the ballot. He referred to his written testimony where it would add concerning the Neighborhood Commission that no person should concurrently serve both on the Commission and the Neighborhood Board. He stated there were three individual which that prohibition would have applied and there are conflicts of interest that arise when you're serving in the Commission which is to supervise in some respect the other 32 Neighborhood Boards and if you are a member of one of those boards in which your own action may come before the Neighborhood Commission. Mr. Heinrich stated he thinks this is the one amendment he would propose otherwise defeat the proposal because there are other proposals that deserve to be on the ballot.

Michelle Kidani testified on behalf of the Administration in opposition because they feel this proposal is redundant and the powers and duties already rest with the Neighborhood Commission in Section 1-10 in the Revised Neighborhood Plan and also already implied in Section 14-103 of the Charter.

ACTION:

Commissioner Lendio moved to approve Proposal 13, Commissioner Grau seconded that motion. Discussion followed.

Commissioner Lendio commented when they first started the process, the biggest Constituency that came to testify was from the Neighborhood Commission. She went on to say this is the last proposal left regarding the Neighborhood Commission and is a compromised amendment the Commission worked on at their last meeting. She stated she would vote on passing the proposal on to the voters to decide if they would like this change in the charter.

Commissioner Mikulina stated he would be voting in opposition to the proposal. He noted based on Mr. Heinrich testimony stating the Neighborhood Commission could us an overhaul that should be best left to the City Council to deliberate in their upcoming session.

Chair Takaki clarified with Commissioner Tom that this proposal was amended with the language he proposed at the April 18th meeting? Commissioner Tom responded that is true.

AYES: TAKAKI, LENDIO, SULLIVAN - 3
NOES: CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, MEDER, MIKULINA,
MYERS, PACOPAC - 9
ABSTAIN: TOM – 1

MOTION FAILED

Chair Takaki asked to take a recess until 6:30p.m. Commissioner Lendio moved to take a recess till 6:30p.m., Commissioner Pacopac seconded that motion.

****RECESS 6:10 pm.

****RECONVENE – 6:33 p.m.

**** PROPOSAL 55** - Term Limits and Staggered Terms; Re term limits and staggered terms for Councilmembers.

The following individuals testified:

1. Tom Heinrich
2. Blake McElheny
3. Jeff Coelho, Personal Representative of Mayor Mufi Hannemann
4. Donovan Dela Cruz, Council Chair, Honolulu City Council

Written testimony:

1. Jeff Coelho, Personal Representative of Mayor Mufi Hannemann
2. Charles Djou, Councilmember, Honolulu City Council
3. Piilani Kaopuiki, President, League of Women Voters of Honolulu
4. Donovan Dela Cruz, Council Chair, Honolulu City Council
5. Tom Heinrich

Tom Heinrich testified in favor. He stated Proposal 55 as amended he supports placing on the ballot. He goes on to say he thinks in the interest in what the Commission has done to formulate the two questions that are wound then set in to motion later the necessary work to transition into continuing term limits or doing away with them and continuing or doing away with staggered terms. Mr. Heinrich stated Proposal 55 as amended states what those policy questions are. He commented he thinks this should move forward to the electorate so they could decide on those two questions.

Blake McElheny testified in support. He noted a key issue in consideration that he thinks would be a concern of any taxpayer or citizen to be represented by a Councilmember for whom they did not have an opportunity to vote for.

Jeff Coelho testified on behalf of the Administration in opposition. He stated the Administration wants to remind the Charter Commission that the original Charter had envisioned an equally balanced government between the Mayor's Office and the Council office. He went on to say the amendment that is proposed would defeat that purpose and would establish different term limits for the Mayor and the City Council. Mr. Coelho stated the Commission already opened the door and suggests that the Commission might look at another amendment that would put the Mayor in also with the term limits that they would extend with the City Council. He went on to say it is also important to consider that in the 1998 election voted over 70% for staggered terms and before that voted by 2/3rds majority for term limits. He stated these are issues the Commission debated for months but in fairness he states he thinks they should go back to the root of the charter – equal government, equal representation, equal terms.

Commissioner Pacopac asked Mr. Coelho regarding his suggested amendment would have the Mayor on equal terms with the Councilmembers? Mr. Coelho responded yes. Commissioner Pacopac asked if that's all it was? Mr. Coelho responded that would create that balance, strong Mayor, strong Council as opposed to a term limit that has different number of years compared to another office.

Commissioner Lendio asked Mr. Coelho if the voters vote in 2006 to do away with term limits or do away with staggered terms or extend to three four year term limits, is he saying the Mayor should be treated equally? Mr. Coelho responded yes. Commissioner Lendio stated if in 2006 the voters adopt either one of the scenarios and the City Council then puts an amendment on the ballot in 2008 giving the mayor that same prerogative would that be satisfactory to the administration? Mr. Coelho responded he doesn't think so. He went on to say he thinks the Commission has the opportunity to correct it now and make that change and let the public decide in total on the equal package as opposed to splintering the package for the public. Commissioner Lendio then asked Mr. Coelho to clarify that he suggest the Commission integrate the Mayor into the question because if there's a question with regards the Council is some sort amendment that would address the reapportionment issue which really doesn't apply to the Mayor's office. But if the Commission applied the Mayor into the scenario, wouldn't it confuse the voters because they are not addressing the reapportionment issue with regards to the Mayor? Mr. Coelho responded he appreciates the Commission's attempt to address the reapportionment issue but he stated what he thinks is important is to not lose sight of the intentional direction of the City Charter which was to create a strong City Council, strong Mayor. He went on to say by differentiating term limits this Charter Commission is changing that balance. Commissioner Lendio stated what she's afraid of is if there is a question for the City Council driven by the potential reapportionment scenario and then they have a question for the Mayor because what's good for the goose is good for the gander. She goes one to say throughout the process she's always argued throughout the entire process that if there's strong Mayor there should be a strong Council. She stated she's afraid that if the voters approve scenario "?" for the City Council and voted it down for the Mayor then there's an affirmative statement by the voters that may be inconsistent with each other. Commissioner Lendio commented she's really afraid that if the Commission doesn't know if the electorate would want to delete term limits, delete staggered terms or extend term limits and then they put the Mayor in at the same time. One may pass and one may not and feels at that point it would be chaos with regards to what the policy really is with regards to the voters. She went on to say she's afraid of that situation at this point until they find out whether or not the voters really want to approve what they did in 1992 or they feel it should be changed. Commissioner Lendio commented she thinks the 1992 Commission didn't really consider how reapportionment would affect the staggered term situation. Mr. Coelho replied he understands Commissioner Lendio's argument and point but thinks they need to weigh strong Mayor strong Council. He goes on to say when they shift terms and say one term limit is less than the other term limit, they are no longer equal and have shifted one of the basic foundation principles of the Charter.

Commissioner Coffee asked for clarification from the Commissioners that they agreed that the issue of terms limits was separate from staggered terms. Commissioner Tom responded he doesn't know if the Commissioners agreed but there was a discussion that the staggering of the terms affects more the reapportionment than the term limits. Commissioner Coffee then asked how did they get combined? Commissioner Tom responded that's how it was presented initially. Commissioner Lendio responded there was an amendment proposed by Commissioner Tom to try to separate those out but it was defeated and they adopted the amendment they are reviewing to move forward.

Council Chair Dela Cruz stated he understood Mr. Coelho's statement that the voters did vote by a margin of 70% but the voters did not have the total picture as well as the impact regarding staggering and term limits. He went on to say it has a multiplying effect and if the problem is not resolved now, the next Charter Commission doesn't convene until 2016. He stated no elected official would put something on the ballot to extend or take away term limits because it looks too self-serving. Council Chair Dela Cruz clarified the Mayor doesn't have district because his district is the entire County so he would not be affected during reapportionment which is a big difference. He went on to say the Council is a different body, a legislative body and he believes there are checks and balances within the Charter and should any of the proposals move forward, they will be preserved. The Legislature and the Governor, Kauai County Council has no term limits and the Mayor has two four-year term limits. These are examples of where the balance of power is preserved and feels that is still addressed. Council Chair Dela Cruz stated that this Commission needs to look at the problem and put the solution forward so the voters can be assured that in 2012 that there is not going to be a problem where they have a Councilmember that they didn't vote for.

Commissioner Lendio asked Council Chair Dela Cruz if the voters vote for scenario "A" or "B" under the proposal they have now, is the City Council going to introduce a ballot amendment in 2008 to give the Mayor equal footing to retain strong Mayor strong Council government that they all strongly believe in. Council Chair Dela Cruz responded which ever proposal passes if they pass he would be more than happy to introduce an amendment to be placed on the 2008 ballot to give the Mayor a similar process.

Commissioner Pacopac asked Council Chair Dela Cruz as far as the Administration's amendment to make it equal does he agree. Council Chair Dela Cruz responded that's for the Commission to decide. Council Chair Dela Cruz goes on to say his concern is making sure the voters get an opportunity to fix the problem.

Commissioner Coffee stated he feels only staggered terms needs to be fixed by the Commission. He asked Council Chair Dela Cruz if the term limits were broken? Council Chair Dela Cruz responded that's for the Commission and the public to decide.

Commissioner Pacopac asked Corporation Counsel if there would be any legal problem with the reapportionment on the proposal. Deputy Corporation Counsel Spurlin responded she doesn't understand Commissioner Pacopac's question but the reapportionment problem arises because of the staggering and not term limits. Deputy Corporation Counsel Spurlin went on to say this proposal would address the reapportionment problem and also addresses term limits, whether you want term limits or not. She stated there's two issues not one. Commissioner Pacopac stated the basic problem is staggering and not term limits. Deputy Corporation Counsel Spurlin responded the original proposal was for term limits but understand the argument presented to the Commission was to fix reapportionment. She noted she's not sure if her understanding is correct and they would have to ask the person who introduced the proposal. But if the goal was to fix the reapportionment they would just need to fix staggering but if they want to address term limits, that's up to the Commission.

Commissioner Tom commented what he thinks Commissioner Pacopac is asking is can a Councilmember represent a district that did not vote for them. Deputy Corporation

Counsel Spurlin responded it is not unconstitutional or illegal. She stated many states permit holdover incumbents and understand the constituents did not have the opportunity to vote for that particular politician but that's the result of staggering, if the municipality or government wanted to retain staggering.

ACTION:

FIRST MOTION: Commissioner Lendio moved to approve Proposal 55, Commissioner Hirano seconded that motion. Discussion followed.

Commissioner Coffee asked if the Commission moves the proposal forward, are they recommending the end to term limits or continuation of term limits. Commissioner Lendio responded she doesn't think they are recommending any of the scenarios Commissioner Coffee asked about. She goes on to say there are three possible scenarios regarding the term limits in the proposal. There's keeping the status quo by voting "no", if they go to "A" to do away with term limits it would eliminate it, if they go to "B" it would extend for another term; instead of two four-year terms they would have three four-year terms. Commissioner Lendio stated those are the three choices that voters would have. She commented under the scenario she feels staggering has to go because reapportionment would complicate the staggering issue. She went on to say as a policy statement in allowing the voters to make that determination, they can either "A" keep the status quo as the staggering, or "B" do away with it by either selecting "A" or "B". Commissioner Lendio stated her only concern is the strong Mayor and strong Council and feels strongly with what is good for the goose is good for the gander. She went on to say what applies to the City Council should apply to the Mayor in terms of term limits depending on what the voters decide. She stated the Commission can't determine with the voters would decide until they find out after the 2006 elections. She went on to say that's why it's very important to her that Council Chair Dela Cruz testified before the Commission and gave her reassurance that if it happens for the City Council it will happen for the Mayor on the next ballot amendment in 2008 because the Mayor is not affected by apportionment. Commissioner Coffee asked what would be the difficulty of deferring this proposal to the May 10th meeting to amend it to include Mayor in the event the voters vote for an end to term limits? Commissioner Lendio responded she couldn't procedurally in her mind visualize that and stated she thought a lot about it and that's why she got the reassurance from City Council Chair Dela Cruz. She went on to say she doesn't know if the voters would want to do away with term limits but this would give them the opportunity to determine if they do. She stated as a policy she feels staggering needs to be eliminated because the reapportionment every 10 years is going to put the whole system out of whack because of the staggering terms.

Commissioner Myers stated his concerns would be even with Council Chair Dela Cruz' assurance that he would propose it, it doesn't mean it is going to pass and there could be a situation where the Council and Mayor being at odds at that particular time and the Council says they don't want the Mayor on an even platform. He went on to say he doesn't know it would happen with this administration and this Council but prior history has shown there could be a very bad relationship between the Council and the Mayor at any given time and would be uncomfortable moving this forward. He stated he would prefer to defer this and doing some language changes.

Commissioner Kawashima wanted to respond to Commissioner Coffee regarding term limits. He stated he doesn't see the Commission recommending one way or the other. He goes on to say he sees it as term limits is one potential solution to the staggering problem. Commissioner Kawashima stated he doesn't feel it's the Commission responsibility to make that decision regarding term limits. He goes on to say it's a solution, the public should be able to vote to keep term limits or not. Commissioner Kawashima stated his concern with amending the proposal is it might raise some confusion only because with respect to the Mayor these issues don't apply to the Mayor. He goes on to say that could cause confusion at the ballot box.

Commissioner Chang asked Council Chair could respond to the remarks addressed by Commissioner Myers and whether or not there some way of emphasizing the expressions of the Commission relative to what he has indicated? Council Chair Dela Cruz responded they could ask Corporation Counsel but they may be able to draft something for the next ballot for the Mayor to approve for the next election. Commissioner Chang asked would a statement from the Commission help? Council Chair Dela Cruz responded the Charter Commission is a body that was half appointed by the Council and half appointed by the Mayor and he doesn't think the Council would neglect to listen to what the Commission is asking for. Council Chair Dela Cruz addressed Commissioner Myers statement regarding it doesn't affect that many people when redistricting. He feels that statement is false and used his district as an example, which are two former Councilmembers Holmes (Kahuku to Kailua) and Councilmember Mansho (Sunset Beach to Waipahu). Council Chair Dela Cruz stated his district is from Mililani Mauka all the way around to Kaneohe. He went on to say it would definitely impact, every 10 years that this happens there will be population growth. The amount of growth in Kapolei it will definitely impact the lives. He stated over the last 20 years you can see the districts has gotten larger in the urban core because population growth has increased in Kapolei.

Commissioner Sullivan stated she is not comfortable is support this they way it is currently drafted. She went on to say she does feel it's correct to address term limits for Council with out addressing term limits for Mayor and that's how the voter's addressed it not too long ago. She stated she could support an amendment to defer the proposal if the Commission thought it was worth working on the language, but could not support it in its current form.

Chair Takaki asked the Parliamentarian. He asked if they Commission votes on the current motion that is on the floor and it do not pass, could they vote to amend the proposal? Commissioner Lendio responded they could move to defer the proposal. Chair Takaki clarified do they have to first withdraw the motion that is on the floor before they vote on deferring the motion? Commissioner Myers commented he thought a motion to defer or refer could be done at any time. Commissioner Lendio responded a friendly motion could be done at anytime and agreed with Commissioner Myers.

SECOND MOTION: Commissioner Myers moved to defer Proposal 55 to the May 10th meeting with the intent of fixing the language to include the Mayor in the removing or changing the term limits, Commissioner Pacopac seconded that motion. Discussion followed.

Chair Takaki asked if the Commission votes "no" to defer, would they be able to go back to the original motion? Commissioner Lendio responded they would go back to the motion to approve.

Commissioner Coffee stated if they pass the motion to defer the change would be rather simple and could say in alternative "A" to add; this alternative would also remove term limits for the Mayor's office. Commissioner Lendio responded the difficulty she is having is they looked at the issue because of the reapportionment situation that is going to come up and that doesn't apply to the Mayor's office. She goes on to say she's having a hard time justifying at this point that they would defer to amend the proposal. She states because the Commission has gone through such a long process to discuss the reapportionment issue.

Commissioner Myers agreed that the Mayor doesn't have anything to do with reapportionment, but on the other hand he doesn't believe that the removal of term limits and reapportionment has anything to do with each other. He goes on to say the Commission is considering them together and stated they don't work together but it was put together on one proposal.

Commissioner Grau asked if this motion passed to the next meeting and the Commission was to eliminate alternative "A" would that solved the technical problem of staggered terms and would not change the term limits? The Commission responded yes. He asked if was appropriate to add that as an alternative that people might find acceptable at the next meeting when it is properly sunshined? Commissioner Myers responded eliminating alternative "A" still leaves the issue of changing the term limits from two four-year terms to three four-year terms, which would still affect the Mayor. Commissioner Lendio responded the reason it was drafted in the form before the Commission was to give the most possible scenarios to the voters to decide.

Commissioner Mikulina stated he support Commissioner Lendio's position and not supporting the deferral motion. He likes the comprised version they worked on at the last meeting and supports it as written. He went on to say if the proposal passes the election, have the Council responds with a Ballot Amendment.

Commissioner Coffee commented there may a number of things that may happen between now and then that at the least or the most obvious is the Council may vote down the proposed ballot amendment. He noted he would be very uncomfortable passing the amendment out in the current language because of that. Chair Takaki asked Council Chair Dela Cruz for his comments. Council Chair Dela Cruz stated the reason for doing staggered terms was that so all Councilmembers would not start at the same time. He stated if the Commission put in three four-year terms the likelihood of carry-overs is greater. He went on to say when they did the research the average length of stay at the City Council was 6-8 years. So if all the Councilmembers left at the same time, the Commission would have the same problem that they tried to solve with staggered and that's why the three four-year terms work. He noted it doesn't weaken the Mayor's office because the likelihood of Councilmembers moving in and out within an 8-year period is great based on facts and history the City Clerk Office researched. Council Chair Dela Cruz commented the Mayor is not affected by reapportionment and

the fact the original question only included the Council which the public was well aware of this, there were newspaper articles several times, the question about inclusion of the Mayor was never part of that. He went on to say amending the proposal to include it in now, doesn't serve the public's best interest because they would have had time to testify and propose other amendments if they were going to include the Mayor.

SECOND MOTION VOTING (to defer to May 10):

AYES: CHANG, COFFEE, MYERS, PACOPAC, SULLIVAN – 5
NOES: TAKAKI, GRAU, HIRANO, KAWASHIMA, LENDIO, MEDER, MIKULINA,
TOM – 8

MOTION FAILED.

FIRST MOTION VOTING (to approve the proposal):

AYES: TAKAKI, GRAU, HIRANO, KAWASHIMA, LENDIO, MEDER, MIKULINA -
7
NOES: CHANG, COFFEE, MYERS, PACOPAC, SULLIVAN, TOM - 6

MOTION PASSED.

**** PROPOSAL 86** - City Council; Increase the number of members on the City Council from 9 to 13.

The following individuals testified:

1. Tom Heinrich
2. Donovan Dela Cruz, Council Chair, Honolulu City Council
3. Mary Pat Waterhouse, Director, Department of Budget and Fiscal Services
4. Stan Fichtman, Staff to Councilmember Charles Djou, Honolulu City Council
5. Rod Tam, Councilmember, Honolulu City Council

Written testimony:

1. Charles Djou, Councilmember, Honolulu City Council
2. Choon James, Realtor
3. Donovan Dela Cruz, Council Chair, Honolulu City Council
4. Tom Heinrich
5. Mary Pat Waterhouse, Director, Department of Budget and Fiscal Services
6. Barbara Marshall, Councilmember, Honolulu City Council
7. Piilani Kaopuiki, President, League of Women Voters of Honolulu

Tom Heinrich testified on Proposal 86 as amended in favor.

Council Chair Dela Cruz testified in opposition. He pointed out practical issues; they can't have caucus, they can't have discussions and to have that many Councilmembers and not be able to talk to one another, he feels that would not serve the public interest. Commissioner Mikulina clarified Council Chair's district being two districts with 90,000 people. Council Chair responded every Councilmember has 90,000 people.

Commissioner Mikulina then asked Council Chair Dela Cruz, why shouldn't the Council number increase to have better representation? Council Chair Dela Cruz stated he thinks the rationale is a little different, for example the Congress they increase the number of Congressmen based on population. He went on to say if the Charter Commission says based on when the population reaches and additional 90,000, add another member to the Council or whatever the case may be. Council Chair Dela Cruz stated there needs to be some rational basis behind it. Commissioner Mikulina asked if Council Chair Dela Cruz was able to see the research done by Researcher Nikki Love which stated in the 1970's there has been a 40% increase in district size since the set-up of 9 districts and asked if he would support a 40% increase? Council Chair responded there's some practical ness and there is going to be some expenses as well. Commissioner Mikulina commented that Council Chair Dela Cruz mentioned the rational basis, which is crystal clear, 40%, increases in district size 40% increase in expense. Commissioner Mikulina asked Council Chair Dela Cruz if he was not worried their Councilmember is under serving that people? Council Chair Dela Cruz responded he or his staff attends all of his Neighborhood Board Meeting, the Council is transparent as far as communication – all of their meetings are on Olelo, all of their documents are on docu-share, and all of their expense accounts are online.

Mary Pat Waterhouse testified in opposition. She read her written testimony into the record.

Stan Fichtman of Councilmember Djou's office testified in support and stood on their written testimony. Commissioner Mikulina asked Mr. Fichtman if he knew how Councilmember Djou would respond to the claims that this would be an unneeded expense? Mr. Fichtman responded he would need to ask Councilmember Djou. Commissioner Chang asked Mr. Fichtman how would he respond to the matter of fact that the State of Hawaii since Statehood that the Congress representation of two Senators and two House of Representative has never increased the numbers, does that go to say that the State of Hawaii is grossly underrepresented by the two Congress Senators and the two Congress Representatives? Mr. Fichtman responded he thinks that is a different comparison, from Councilmember Djou's point of view, he feels representing people at the municipal level is very important and that there should be easier access to the Councilmembers at the municipal level and as you go up to the Congressional level it would be much more general when dealing with the State issues. Commissioner Chang stated there has not been any testimony that he has heard that has proven a rational basis to increase the number of Councilmembers.

Councilmember Rod Tam testified he wanted to bring clarity as to how he views it as a Councilmember. He stated when serving the public is not a numbers game. He went on to say he and staff goes out into their community. He commented he also sees his colleagues going into the community a great deal and it's a matter in terms of a person willing to serve the public more than anything else. He noted he served on the State House of Representatives and Senate. His current district as Councilmember is basically two and one half the size of the Senatorial district. Councilmember Tam commented it's basically you elect a person as to whether they want to serve or not for the sake of public service.

ACTION:

Commissioner Lendio moved to approve Proposal 86, Commissioner Grau seconded that motion. Discussion followed.

Commissioner Myers stated he would be voting against the proposal for several reasons brought up. He noted the inability to caucus and feels it's too big of a group to meet all at once, the expense although he doesn't believe that money should stand in the way of good government but is not convinced this would make the government better. He went on to say there is no physical room in the building as the current Council staff can't be on the same floor with their Councilmember. He stated he doesn't think the Commission can allow this to be voted in for physical, financial and other reasons. Commissioner Myers commented maybe 5 years down the road and if they did 5 years down the road, he would rather look at Council-at-large. He goes on to say it would mean they are not more or less obligated in the district and thinks having extra Councilmembers at large would be a good thing for the City.

Commissioner Grau supported Commissioner Myers' statements.

Commissioner Coffee asked if the Commissioners discussed Councilmembers-at-large versus new Council districts? Chair Takaki responded no.

Commissioner Mikulina stated he would be supporting the proposal. He went on to say he would hate to see logistical or small costs elevated above having good representative government.

Commissioner Meder stated he would be voting in favor. He is also is concerned with the growing numbers and the issues of space in the building and the cost of \$1 million dollars for four additional seats. Looking at what the total budget is for the City that doesn't seem like that should be a barrier to improving the Council's representation. He went on to say the issue to where they put them or how they manage this are better to deal with now because if they wait much longer the opportunity would be slimmer and the cost would be more expensive.

AYES: COFFEE, MEDER, MIKULINA - 3
NOES: TAKAKI, CHANG, GRAU, HIRANO, KAWASHIMA, LENDIO, MYERS,
PACOPAC, SULLIVAN, TOM - 10

MOTION FAILED

CATEGORY 4: HOUSEKEEPING AMENDMENTS

PROPOSAL 35 - Department of Information Technology; Revise the Powers, Duties and Functions of the Director.

The following individuals testified:
NONE

Written testimony:
NONE

ACTION:

Commissioner Lendio moved to approve Proposal 35, Commissioner Grau seconded that motion. No discussion followed.

AYES: CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MIKULINA,
MYERS, SULLIVAN, TOM - 10
NOES: TAKAKI, MEDER, PACOPAC – 3

MOTION PASSED

PROPOSAL 61 - Councilmember terms; Change the beginning time of the terms of Councilmember.

The following individuals testified:
NONE

Written testimony:
1. Tom Heinrich

ACTION:

Commissioner Lendio moved to approve Proposal 61, Commissioner Grau seconded that motion. Discussion followed.

Commissioner Mikulina stated he would be supporting this proposal.

Chair Takaki stated he would be voting against this proposal because he thinks this could be handled by the Council later.

Commissioner Lendio stated she would be voting against it also.

AYES: CHANG, MYERS - 2
NOES: TAKAKI, COFFEE, GRAU, HIRANO, KAWASHIMA, LENIDO, MEDER,
MIKULINA, PACOPAC, SULLIVAN, TOM – 11

MOTION FAILED

PROPOSAL 76 – Police; Delete prohibition of political activities by police department employees.

The following individuals testified:
NONE

Written testimony:
1. Tom Heinrich

ACTION:

Commissioner Lendio moved to approve Proposal 76, Commissioner Chang seconded that motion. Discussion followed.

Commissioner Coffee commented the proposal seems to be policy rather than housekeeping.

Commissioner Lendio explained there's a provision currently in the Charter, which prohibits Police officers from engaging in political activities, which is unconstitutional and has been ruled by a Court to be unconstitutional. She went on to say the Corporation Counsel's office agreed to try to propose this on the next Charter to delete that provision because it's been ruled that it is unconstitutional. She clarified that was part of the stipulation with SHOPO which they agreed to some time ago, so it's being proposed to be deleted by stipulation and should be because it's unconstitutional.

Commissioner Mikulina asked Commissioner Lendio if this proposal ought to go with the housekeeping issues? Commissioner Lendio responded yes.

AYES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MEDER, MIKULINA, MYERS, SULLIVAN, TOM - 12
NOES: PACOPAC – 1

MOTION PASSED

PROPOSAL S-6 - Petitions; Delete requirement of Social Security numbers on petitions.

The following individuals testified:
1. Stan Fichtman, Staff to Councilmember Charles Djou, Honolulu City Council

Written testimony:
1. Tom Heinrich
2. Charles Djou, Councilmember, Honolulu City Council

Stan Fichtman testified on behalf of Councilmember Djou. He stated this proposal is similar to Proposal 76, which they just passed. He went on to say currently Social

Security numbers are required on petitions to the city and that is illegal by federal statute. Mr. Fichtman stated this proposal would bring the governing document of the City in line with federal statutes.

ACTION:

Commissioner Lendio moved to approve Proposal S-6, Commissioner Grau seconded that motion. Discussion followed.

Commissioner Grau asked if they could have the statement that this provision is unconstitutional and this change is to bring the Charter into conformity with the Constitution. Chair Takaki responded he thinks the Style Committee has that authority and the Style Committee has to report back to the full Commission.

AYES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MEDER, MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM – 13
NOES: NONE – 0

MOTION PASSED

PROPOSAL S-10 - Public notices; Distribution of public notices via a widely accessible electronic medium.

The following individuals testified:
NONE

Written testimony:
NONE

ACTION:

Commissioner Lendio moved to approve Proposal S-10, Commissioner Grau seconded that motion. Discussion followed.

Commissioner Mikulina stated this proposal adds electronic media and thinks this could be combined with the housekeeping measures and update the charter to the 21st Century.

AYES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MEDER, MIKULINA, MYERS, PACOPAC, TOM – 12
NOES: SULLIVAN – 1

MOTION PASSED

Chair Takaki asked Executive Administrator Narikiyo to recap which charter proposed amendments are moving forward. Executive Administrator Narikiyo stated there is one proposal that has been deferred for possible amendments, which is the Ethics Commission Civil fines Proposal 28. There are 11 proposals moving forward of which besides those that are in category four, Proposals 75 and 78 as possible for discussion as housekeeping matters. He went on to say they would amend those on the agenda.

4. Committee Reports

- a. Report of the Budget Committee – None
- b. Report of the Submission and Information Committee – None
- c. Report of the Personnel Committee – Commends the staff for doing a great job.
- d. Report of the Rules Committee – None

5. Officers Reports

A. Chair – Chair stated he would ask for volunteers for the Style Committee. The Style Committee would review the language of the proposals they put forward on the ballot, they would meet under Sunshine Law and would have to report back to the full Commission to get approval of their work. He went on to say if there were no volunteers, the full Commission would be the Style Committee. Commissioner Lendio asked how many people need to be on the Style Committee? Chair Takaki responded he was considering three or five, but wants to see what kind of response they get for volunteers. Executive Administrator Narikiyo noted he doesn't believe there is anything specific in the rules but in 1992 they had five members.

Chair Takaki stated if any of the Commissioners are interested in volunteering to contact Executive Administrator Narikiyo and he would tell you further what needs to be done by the Style Committee.

- B. Vice Chair – Commissioner Mikulina had no report.
- C. Treasurer - Commissioner Myers had no report.
- D. Secretary – Commissioner Pacopac had no report.

6. Announcements

Commissioner Myers asked if the Commission should have the option to amend any of the proposals next time so they don't have to defer anything on the next agenda.

ACTION:

Commissioner Myers moved to have the next agenda have the proposals open for amendment.

Commissioner Lendio stated she has a concern with the public not being able to testify at another if there's an amendment that may be different from what the proposal is at this point. She stated if they adequately sunshine the action, it's okay. She went on say if there is an amendment that's different than what the proposal says, then they might want to consider at that meeting to have another to sunshine that particular amendment if they feel strongly about it. Commissioner Lendio commented legally they'll be okay if they sunshine the possible action. She asked Corporation Counsel for their opinion. Deputy Corporation Counsel Kawauchi responded yes.

Commissioner Coffee seconded that above motion.

Commissioner Tom asked Commissioner Lendio if they amend any proposal next week, that there be a subsequent meeting the following week? Commissioner Lendio responded that's something the Commission may want to consider because they are not going to be able to have a public that realizes what the amendment would be until it actually happens. She stated that's something that is inconsistent to their prior practice but that's their decision to make and could make that decision at that point.

Discussion followed.

Commissioner Sullivan asked for clarification if any of the Commissioners have any particular proposal that they have in mind that they want to amend? Commissioner Myers responded he did not but did not want to run into what they had run into today. Commissioner Sullivan asked if the motion would be applied to items that would be on the agenda next week? Chair Takaki responded yes for the May 10 meeting.

Commissioner Grau stated he's worried that some special interest would want to testify to amending and unless there's a compelling reason he thinks they've given everyone enough time to testify and worked hard to get them to where they are now. He went on to say if there are one or two that they feel needs corrective action, then he'd agree but if it's not he'll vote it no. Commissioner Grau stated he would be voting no for this action unless someone give him a reason to vote yes. Commissioner Lendio responded this gives them an alternative situation where they would not have to have another meeting. Commissioner Grau stated he's worried about the risk. Commissioner Lendio went on to say if they do have a compelling reason to defer a proposal similar to their action on Proposal 28, they have to have another meeting. She goes on to say if they Sunshine the action potentially if they want to do it then, then they won't have to meet again. She stated as she stated earlier they would not give the public notice of how they would amend the proposal.

Commissioner Tom commented if their prior practice was to come back a week after, they should come back. He stated they would not be gaining a week if they say they could amend unless they change their prior practice. Commissioner Lendio commented she doesn't see any problem to allow them the possibility but they don't have to act on it. Chair Takaki commented before they vote to amend, they could look at their past practices before they amend.

AYES: COFFEE, LENDIO, MEDER, MYERS - 4
NOES: TAKAKI, CHANG, GRAU, HIRANO, KAWASHIMA, MIKULINA,
PACOPAC, SULLIVAN, TOM - 9

7. Next Meeting Schedule

The next meeting was set for Tuesday, May 10, 2006 at 2:00 p.m. in the Council Committee Room.

8. Adjournment

Meeting was adjourned at 7:47 p.m.